

109TH CONGRESS
1ST SESSION

S. 1033

To improve border security and immigration.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2005

Mr. MCCAIN (for himself, Mr. KENNEDY, Mr. BROWNBAC, Mr. LIEBERMAN, Mr. GRAHAM, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve border security and immigration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Secure America and Orderly Immigration Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—BORDER SECURITY

Sec. 101. Definitions.

SUBTITLE A—BORDER SECURITY STRATEGIC PLANNING

Sec. 111. National Strategy for Border Security.

- Sec. 112. Reports to Congress.
- Sec. 113. Authorization of appropriations.

SUBTITLE B—BORDER INFRASTRUCTURE, TECHNOLOGY INTEGRATION, AND
SECURITY ENHANCEMENT

- Sec. 121. Border security coordination plan.
- Sec. 122. Border security advisory committee.
- Sec. 123. Programs on the use of technologies for border security.
- Sec. 124. Combating human smuggling.
- Sec. 125. Savings clause.

SUBTITLE C—INTERNATIONAL BORDER ENFORCEMENT

- Sec. 131. North American Security Initiative.
- Sec. 132. Information sharing agreements.
- Sec. 133. Improving the security of Mexico's southern border.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

- Sec. 201. State criminal alien assistance program authorization of appropriations.
- Sec. 202. Reimbursement of States for indirect costs relating to the incarceration of illegal aliens.
- Sec. 203. Reimbursement of States for pre-conviction costs relating to the incarceration of illegal aliens.

TITLE III—ESSENTIAL WORKER VISA PROGRAM

- Sec. 301. Essential workers.
- Sec. 302. Admission of essential workers.
- Sec. 303. Employer obligations.
- Sec. 304. Protection for workers.
- Sec. 305. Market-based numerical limitations.
- Sec. 306. Adjustment to lawful permanent resident status.
- Sec. 307. Essential Worker Visa Program Task Force.
- Sec. 308. Willing worker-willing employer electronic job registry.
- Sec. 309. Authorization of appropriations.

TITLE IV—ENFORCEMENT

- Sec. 401. Document and visa requirements.
- Sec. 402. Employment Eligibility Confirmation System.
- Sec. 403. Improved entry and exit data system.
- Sec. 404. Department of labor investigative authorities.
- Sec. 405. Protection of employment rights.
- Sec. 406. Increased fines for prohibited behavior.

TITLE V—PROMOTING CIRCULAR MIGRATION PATTERNS

- Sec. 501. Labor migration facilitation programs.
- Sec. 502. Bilateral efforts with Mexico to reduce migration pressures and costs.

TITLE VI—FAMILY UNITY AND BACKLOG REDUCTION

- Sec. 601. Elimination of existing backlogs.
- Sec. 602. Country limits.
- Sec. 603. Allocation of immigrant visas.

- Sec. 604. Relief for children and widows.
- Sec. 605. Amending the affidavit of support requirements.
- Sec. 606. Discretionary authority.
- Sec. 607. Family unity.

TITLE VII—H-5B NONIMMIGRANTS

- Sec. 701. H-5B nonimmigrants.
- Sec. 702. Adjustment of status for H-5B nonimmigrants.
- Sec. 703. Aliens not subject to direct numerical limitations.
- Sec. 704. Employer protections.
- Sec. 705. Authorization of appropriations.

TITLE VIII—PROTECTION AGAINST IMMIGRATION FRAUD

- Sec. 801. Right to qualified representation.
- Sec. 802. Protection of witness testimony.

TITLE IX—CIVICS INTEGRATION

- Sec. 901. Funding for the Office of Citizenship.
- Sec. 902. Civics integration grant program.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

- Sec. 1001. Federal reimbursement of emergency health services furnished to undocumented aliens.
- Sec. 1002. Prohibition against offset of certain Medicare and Medicaid payments.
- Sec. 1003. Prohibition against discrimination against aliens on the basis of employment in hospital-based versus nonhospital-based sites.
- Sec. 1004. Binational public health infrastructure and health insurance.

TITLE XI—MISCELLANEOUS

- Sec. 1101. Submission to Congress of information regarding H-5A nonimmigrants.
- Sec. 1102. H-5 nonimmigrant petitioner account.
- Sec. 1103. Anti-discrimination protections.
- Sec. 1104. Women and children at risk of harm.
- Sec. 1105. Expansion of S visa.
- Sec. 1106. Volunteers.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The Government of the United States has
 4 an obligation to its citizens to secure its borders and
 5 ensure the rule of law in its communities.

6 (2) The Government of the United States must
 7 strengthen international border security efforts by

1 dedicating adequate and significant resources for
2 technology, personnel, and training for border region
3 enforcement.

4 (3) Federal immigration policies must adhere to
5 the United States tradition as a nation of immi-
6 grants and reaffirm this Nation's commitment to
7 family unity, economic opportunity, and humane
8 treatment.

9 (4) Immigrants have contributed significantly
10 to the strength and economic prosperity of the
11 United States and action must be taken to ensure
12 their fair treatment by employers and protection
13 against fraud and abuse.

14 (5) Current immigration laws and the enforce-
15 ment of such laws are ineffective and do not serve
16 the people of the United States, the national security
17 interests of the United States, or the economic pros-
18 perity of the United States.

19 (6) The United States cannot effectively carry
20 out its national security policies unless the United
21 States identifies undocumented immigrants and en-
22 courages them to come forward and participate le-
23 gally in the economy of the United States.

24 (7) Illegal immigration fosters other illegal ac-
25 tivity, including human smuggling, trafficking, and

1 document fraud, all of which undermine the national
2 security interests of the United States.

3 (8) Illegal immigration burdens States and local
4 communities with hundreds of millions of dollars in
5 uncompensated expenses for law enforcement, health
6 care, and other essential services.

7 (9) Illegal immigration creates an underclass of
8 workers who are vulnerable to fraud and exploi-
9 tation.

10 (10) Fixing the broken immigration system re-
11 quires a comprehensive approach that provides for
12 adequate legal channels for immigration and strong
13 enforcement of immigration laws which will serve the
14 economic, social, and security interests of the United
15 States.

16 (11) Foreign governments, particularly those
17 that share an international border with the United
18 States, must play a critical role in securing inter-
19 national borders and deterring illegal entry of for-
20 eign nationals into the United States.

21 (12) Federal immigration policy should foster
22 economic growth by allowing willing workers to be
23 matched with willing employers when no United
24 States worker is available to take a job.

1 (13) Immigration reform is a key component to
 2 achieving effective enforcement and will allow for the
 3 best use of security and enforcement resources to be
 4 focused on the greatest risks.

5 (14) Comprehensive immigration reform and
 6 strong enforcement of immigration laws will encour-
 7 age legal immigration, deter illegal immigration, and
 8 promote the economic and national security interests
 9 of the United States.

10 **TITLE I—BORDER SECURITY**

11 **SEC. 101. DEFINITIONS.**

12 In this title:

13 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 14 TEES.—The term “appropriate congressional com-
 15 mittees” means—

16 (A) the Committee on Homeland Security
 17 and Governmental Affairs of the Senate;

18 (B) the Committee on the Judiciary of the
 19 Senate;

20 (C) the Committee on Homeland Security
 21 of the House of Representatives; and

22 (D) the Committee on the Judiciary of the
 23 House of Representatives.

24 (2) INTERNATIONAL BORDER OF THE UNITED
 25 STATES.—The term “international border of the

1 United States” means the international border be-
 2 tween the United States and Canada and the inter-
 3 national border between the United States and Mex-
 4 ico, including points of entry along such inter-
 5 national borders.

6 (3) SECRETARY.—Except as otherwise provided,
 7 the term “Secretary” means the Secretary of Home-
 8 land Security.

9 (4) SECURITY PLAN.—The term “security plan”
 10 means a security plan developed as part of the Na-
 11 tional Strategy for Border Security set forth under
 12 section 111(a) for the Border Patrol and the field
 13 offices of the Bureau of Customs and Border Pro-
 14 tection of the Department of Homeland Security
 15 that has responsibility for the security of any portion
 16 of the international border of the United States.

17 **Subtitle A—Border Security**

18 **Strategic Planning**

19 **SEC. 111. NATIONAL STRATEGY FOR BORDER SECURITY.**

20 (a) IN GENERAL.—In conjunction with strategic
 21 homeland security planning efforts, the Secretary shall de-
 22 velop, implement, and update, as needed, a National
 23 Strategy for Border Security that includes a security plan
 24 for the Border Patrol and the field offices of the Bureau
 25 of Customs and Border Protection of the Department of

1 Homeland Security that has responsibility for the security
2 of any portion of the international border of the United
3 States.

4 (b) CONTENTS.—The National Strategy for Border
5 Security shall include—

6 (1) the identification and evaluation of the
7 points of entry and all portions of the international
8 border of the United States that, in the interests of
9 national security and enforcement, must be pro-
10 tected from illegal transit;

11 (2) a description of the most appropriate, prac-
12 tical, and cost-effective means of defending the inter-
13 national border of the United States against threats
14 to security and illegal transit, including intelligence
15 capacities, technology, equipment, personnel, and
16 training needed to address security vulnerabilities
17 within the United States for the Border Patrol and
18 the field offices of the Bureau of Customs and Bor-
19 der Protection that have responsibility for any por-
20 tion of the international border of the United States;

21 (3) risk-based priorities for assuring border se-
22 curity and realistic deadlines for addressing security
23 and enforcement needs identified in paragraphs (1)
24 and (2);

1 (4) a strategic plan that sets out agreed upon
2 roles and missions of Federal, State, regional, local,
3 and tribal authorities, including appropriate coordi-
4 nation among such authorities, to enable security en-
5 forcement and border lands management to be car-
6 ried out in an efficient and effective manner;

7 (5) a prioritization of research and development
8 objectives to enhance the security of the inter-
9 national border of the United States and enforce-
10 ment needs to promote such security consistent with
11 the provisions of subtitle B;

12 (6) an update of the 2001 Port of Entry Infra-
13 structure Assessment Study conducted by the
14 United States Customs Service, in consultation with
15 the General Services Administration;

16 (7) strategic interior enforcement coordination
17 plans with personnel of Immigration and Customs
18 Enforcement;

19 (8) strategic enforcement coordination plans
20 with overseas personnel of the Department of Home-
21 land Security and the Department of State to end
22 human smuggling and trafficking activities;

23 (9) any other infrastructure or security plan or
24 report that the Secretary determines appropriate for
25 inclusion;

1 (10) the identification of low-risk travelers and
2 how such identification would facilitate cross-border
3 travel; and

4 (11) ways to ensure that the trade and com-
5 merce of the United States is not diminished by ef-
6 forts, activities, and programs aimed at securing the
7 homeland.

8 (c) **PRIORITY OF NATIONAL STRATEGY.**—The Na-
9 tional Strategy for Border Security shall be the governing
10 document for Federal security and enforcement efforts re-
11 lated to securing the international border of the United
12 States.

13 **SEC. 112. REPORTS TO CONGRESS.**

14 (a) **NATIONAL STRATEGY.**—

15 (1) **INITIAL SUBMISSION.**—Not later than 1
16 year after the date of enactment of this Act, the
17 Secretary shall submit the National Strategy for
18 Border Security, including each security plan, to the
19 appropriate congressional committees. Such plans
20 shall include estimated costs of implementation and
21 training from a fiscal and personnel perspective and
22 a cost-benefit analysis of any technological security
23 implementations.

24 (2) **SUBSEQUENT SUBMISSIONS.**—After the
25 submission required under paragraph (1), the Sec-

1 retary shall submit to the appropriate congressional
2 committees any revisions to the National Strategy
3 for Border Security, including any revisions to a se-
4 curity plan, not less frequently than April 1 of each
5 odd-numbered year. The plan shall include estimated
6 costs for implementation and training and a cost-
7 benefit analysis of technological security implemen-
8 tations that take place during the time frame under
9 evaluation.

10 (b) PERIODIC PROGRESS REPORTS.—

11 (1) REQUIREMENT FOR REPORT.—Each year,
12 in conjunction with the submission of the budget to
13 Congress under section 1105(a) of title 31, United
14 States Code, the Secretary shall submit to the ap-
15 propriate congressional committees an assessment of
16 the progress made on implementing the National
17 Strategy for Border Security, including each security
18 plan.

19 (2) CONTENT.—Each progress report submitted
20 under this subsection shall include any recommenda-
21 tions for improving and implementing the National
22 Strategy for Border Security, including any rec-
23 ommendations for improving and implementing a se-
24 curity plan.

25 (c) CLASSIFIED MATERIAL.—

1 (1) IN GENERAL.—Any material included in the
 2 National Strategy for Border Security, including
 3 each security plan, that includes information that is
 4 properly classified under criteria established by Ex-
 5 ecutive order shall be submitted to the appropriate
 6 congressional committees in a classified form.

7 (2) UNCLASSIFIED VERSION.—As appropriate,
 8 an unclassified version of the material described in
 9 paragraph (1) shall be provided to the appropriate
 10 congressional committees.

11 **SEC. 113. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to the Sec-
 13 retary such sums as may be necessary to carry out this
 14 subtitle for each of the 5 fiscal years beginning with the
 15 fiscal year after the fiscal year in which this Act was en-
 16 acted.

17 **Subtitle B—Border Infrastructure,**
 18 **Technology Integration, and Se-**
 19 **curity Enhancement**

20 **SEC. 121. BORDER SECURITY COORDINATION PLAN.**

21 (a) IN GENERAL.—The Secretary shall coordinate
 22 with Federal, State, local, and tribal authorities on law
 23 enforcement, emergency response, and security-related re-
 24 sponsibilities with regard to the international border of the
 25 United States to develop and implement a plan to ensure

1 that the security of such international border is not com-
2 promised—

3 (1) when the jurisdiction for providing such se-
4 curity changes from one such authority to another
5 such authority;

6 (2) in areas where such jurisdiction is shared
7 by more than one such authority; or

8 (3) by one such authority relinquishing such ju-
9 risdiction to another such authority pursuant to a
10 memorandum of understanding.

11 (b) ELEMENTS OF PLAN.—In developing the plan,
12 the Secretary shall consider methods to—

13 (1) coordinate emergency responses;

14 (2) improve data-sharing, communications, and
15 technology among the appropriate agencies;

16 (3) promote research and development relating
17 to the activities described in paragraphs (1) and (2);
18 and

19 (4) combine personnel and resource assets when
20 practicable.

21 (c) REPORT.—Not later than 1 year after imple-
22 menting the plan developed under subsection (a), the Sec-
23 retary shall transmit a report to the appropriate congres-
24 sional committees on the development and implementation
25 of such plan.

1 **SEC. 122. BORDER SECURITY ADVISORY COMMITTEE.**

2 (a) ESTABLISHMENT.—The Secretary is authorized
3 to establish a Border Security Advisory Committee (re-
4 ferred to in this section as the “Advisory Committee”) to
5 provide advice and recommendations to the Secretary on
6 border security and enforcement issues.

7 (b) COMPOSITION.—

8 (1) IN GENERAL.—The members of the Advi-
9 sory Committee shall be appointed by the Secretary
10 and shall include representatives of—

11 (A) States that are adjacent to the inter-
12 national border of the United States;

13 (B) local law enforcement agencies; com-
14 munity officials, and tribal authorities of such
15 States; and

16 (C) other interested parties.

17 (2) MEMBERSHIP.—The Advisory Committee
18 shall be comprised of members who represent a
19 broad cross section of perspectives.

20 **SEC. 123. PROGRAMS ON THE USE OF TECHNOLOGIES FOR**
21 **BORDER SECURITY.**

22 (a) AERIAL SURVEILLANCE TECHNOLOGIES PRO-
23 GRAM.—

24 (1) IN GENERAL.—In conjunction with the bor-
25 der surveillance plan developed under section 5201
26 of the Intelligence Reform and Terrorism Prevention

1 Act of 2004 (Public Law 108–458), the Secretary,
2 not later than 60 days after the date of enactment
3 of this Act, shall develop and implement a program
4 to fully integrate aerial surveillance technologies to
5 enhance the border security of the United States.

6 (2) ASSESSMENT AND CONSULTATION REQUIRE-
7 MENTS.—In developing the program under this sub-
8 section, the Secretary shall—

9 (A) consider current and proposed aerial
10 surveillance technologies;

11 (B) assess the feasibility and advisability
12 of utilizing such technologies to address border
13 threats, including an assessment of the tech-
14 nologies considered best suited to address re-
15 spective threats;

16 (C) consult with the Secretary of Defense
17 regarding any technologies or equipment, which
18 the Secretary may deploy along the inter-
19 national border of the United States; and

20 (D) consult with the Administrator of the
21 Federal Aviation Administration regarding safe-
22 ty, airspace coordination and regulation, and
23 any other issues necessary for implementation
24 of the program.

25 (3) ADDITIONAL REQUIREMENTS.—

1 (A) IN GENERAL.—The program developed
2 under this subsection shall include the utiliza-
3 tion of a variety of aerial surveillance tech-
4 nologies in a variety of topographies and areas,
5 including populated and unpopulated areas lo-
6 cated on or near the international border of the
7 United States, in order to evaluate, for a range
8 of circumstances—

9 (i) the significance of previous experi-
10 ences with such technologies in border se-
11 curity or critical infrastructure protection;

12 (ii) the cost and effectiveness of var-
13 ious technologies for border security, in-
14 cluding varying levels of technical com-
15 plexity; and

16 (iii) liability, safety, and privacy con-
17 cerns relating to the utilization of such
18 technologies for border security.

19 (B) USE OF UNMANNED AERIAL VEHI-
20 CLES.—The aerial surveillance technologies uti-
21 lized in the program shall include unmanned
22 aerial vehicles.

23 (4) CONTINUED USE OF AERIAL SURVEILLANCE
24 TECHNOLOGIES.—The Secretary may continue the
25 operation of aerial surveillance technologies while as-

1 sessing the effectiveness of their utilization and until
2 such time the Secretary determines appropriate.

3 (5) REPORT.—

4 (A) REQUIREMENT.—Not later than 1
5 year after implementing the program under this
6 subsection, the Secretary shall submit a report
7 on such program to the appropriate congress-
8 sional committees.

9 (B) CONTENT.—The Secretary shall in-
10 clude in the report required by subparagraph
11 (A) a description of the program together with
12 such recommendations as the Secretary finds
13 appropriate for enhancing the program.

14 (b) DEMONSTRATION PROGRAMS.—The Secretary is
15 authorized, as part of the development and implementa-
16 tion of the National Strategy for Border Security, to es-
17 tablish and carry out demonstration programs to strength-
18 en communication, information sharing, technology, secu-
19 rity, intelligence benefits, and enforcement activities that
20 will protect the international border of the United States
21 without diminishing international trade and commerce.

22 (c) INSERT CONTINUED USE OF GROUND
23 SURVEILLANCE TECHNOLOGIES.—

1 **SEC. 124. COMBATING HUMAN SMUGGLING.**

2 (a) REQUIREMENT FOR PLAN.—The Secretary shall
3 develop and implement a plan to improve coordination be-
4 tween the Bureau of Immigration and Customs Enforce-
5 ment and the Bureau of Customs and Border Protection
6 of the Department of Homeland Security and any other
7 Federal, State, local, or tribal authorities, as determined
8 appropriate by the Secretary, to improve coordination ef-
9 forts to combat human smuggling.

10 (b) CONTENT.—In developing the plan required by
11 subsection (a), the Secretary shall consider—

12 (1) the interoperability of databases utilized to
13 prevent human smuggling;

14 (2) adequate and effective personnel training;

15 (3) methods and programs to effectively target
16 networks that engage in such smuggling;

17 (4) effective utilization of—

18 (A) visas for victims of trafficking and
19 other crimes; and

20 (B) investigatory techniques, equipment,
21 and procedures that prevent, detect, and pros-
22 ecute international money laundering and other
23 operations that are utilized in smuggling;

24 (5) joint measures, with the Secretary of State,
25 to enhance intelligence sharing and cooperation with

1 foreign governments whose citizens are preyed on by
 2 human smugglers; and

3 (6) other measures that the Secretary considers
 4 appropriate to combating human smuggling.

5 (c) REPORT.—Not later than 1 year after imple-
 6 menting the plan described in subsection (a), the Sec-
 7 retary shall submit to Congress a report on such plan, in-
 8 cluding any recommendations for legislative action to im-
 9 prove efforts to combating human smuggling.

10 **SEC. 125. SAVINGS CLAUSE.**

11 Nothing in this subtitle or subtitle A may be con-
 12 strued to provide to any State or local entity any addi-
 13 tional authority to enforce Federal immigration laws.

14 **Subtitle C—International Border**
 15 **Enforcement**

16 **SEC. 131. NORTH AMERICAN SECURITY INITIATIVE.**

17 (a) IN GENERAL.—The Secretary of State shall en-
 18 hance the mutual security and safety of the United States,
 19 Canada, and Mexico by providing a framework for better
 20 management, communication, and coordination between
 21 the Governments of North America.

22 (b) RESPONSIBILITIES.—In implementing the provi-
 23 sions of this subtitle, the Secretary of State shall carry
 24 out all of the activities described in this subtitle.

1 **SEC. 132. INFORMATION SHARING AGREEMENTS.**

2 The Secretary of State, in coordination with the Sec-
3 retary of Homeland Security and the Government of Mex-
4 ico, is authorized to negotiate an agreement with Mexico
5 to—

6 (1) cooperate in the screening of third-country
7 nationals using Mexico as a transit corridor for
8 entry into the United States; and

9 (2) provide technical assistance to support
10 stronger immigration control at the border with
11 Mexico.

12 **SEC. 133. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**
13 **ERN BORDER.**

14 (a) **TECHNICAL ASSISTANCE.**—The Secretary of
15 State, in coordination with the Secretary of Homeland Se-
16 curity, the Canadian Department of Foreign Affairs, and
17 the Government of Mexico, shall establish a program to—

18 (1) assess the specific needs of the governments
19 of Central American countries in maintaining the se-
20 curity of the borders of such countries;

21 (2) use the assessment made under paragraph
22 (1) to determine the financial and technical support
23 needed by the governments of Central American
24 countries from Canada, Mexico, and the United
25 States to meet such needs;

1 (3) provide technical assistance to the govern-
2 ments of Central American countries to secure
3 issuance of passports and travel documents by such
4 countries; and

5 (4) encourage the governments of Central
6 American countries to—

7 (A) control alien smuggling and traf-
8 ficking;

9 (B) prevent the use and manufacture of
10 fraudulent travel documents; and

11 (C) share relevant information with Mex-
12 ico, Canada, and the United States.

13 (b) IMMIGRATION.—The Secretary of Homeland Se-
14 curity, in consultation with the Secretary of State and ap-
15 propriate officials of the governments of Central American
16 countries shall provide robust law enforcement assistance
17 to such governments that specifically addresses migratory
18 issues to increase the ability of such governments to dis-
19 mantle human smuggling organizations and gain tighter
20 control over the border.

21 (c) BORDER SECURITY BETWEEN MEXICO AND GUA-
22 TEMALA OR BELIZE.—The Secretary of State, in consulta-
23 tion with the Secretary of Homeland Security, the Govern-
24 ment of Mexico, and appropriate officials of the Govern-
25 ments of Guatemala, Belize, and neighboring contiguous

1 countries, shall establish a program to provide needed
2 equipment, technical assistance, and vehicles to manage,
3 regulate, and patrol the international border between Mex-
4 ico and Guatemala and between Mexico and Belize.

5 (d) TRACKING CENTRAL AMERICAN GANGS.—The
6 Secretary of State, in coordination with the Secretary of
7 Homeland Security, the Director of the Federal Bureau
8 of Investigation, the Government of Mexico, and appro-
9 priate officials of the governments of Central American
10 countries, shall—

11 (1) assess the direct and indirect impact on the
12 United States and Central America on deporting vio-
13 lent criminal aliens;

14 (2) establish a program and database to track
15 Central American gang activities, focusing on the
16 identification of returning criminal deportees;

17 (3) devise an agreed-upon mechanism for notifi-
18 cation applied prior to deportation and for support
19 for reintegration of these deportees; and

20 (4) devise an agreement to share all relevant in-
21 formation with the appropriate agencies of Mexico
22 and other Central American countries.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

SEC. 201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

AUTHORIZATION OF APPROPRIATIONS.

Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by striking paragraphs (5) and (6) and inserting the following:

“(5) AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection—

“(i) such sums as may be necessary for fiscal year 2005;

“(ii) \$750,000,000 for fiscal year 2006;

“(iii) \$850,000,000 for fiscal year 2007; and

“(iv) \$950,000,000 for each of the fiscal years 2008 through 2011.

“(B) LIMITATION ON USE OF FUNDS.—

Amounts appropriated pursuant to subparagraph (A) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.”.

1 **SEC. 202. REIMBURSEMENT OF STATES FOR INDIRECT**
 2 **COSTS RELATING TO THE INCARCERATION**
 3 **OF ILLEGAL ALIENS.**

4 Section 501 of the Immigration Reform and Control
 5 Act of 1986 (8 U.S.C. 1365) is amended—

6 (1) in subsection (a)—

7 (A) by striking “for the costs” and insert-
 8 ing the following: “for—

9 “(1) the costs”; and

10 (B) by striking “such State.” and inserting
 11 the following: “such State; and

12 “(2) the indirect costs related to the imprison-
 13 ment described in paragraph (1).”; and

14 (2) by striking subsections (c) through (e) and
 15 inserting the following:

16 “(c) MANNER OF ALLOTMENT OF REIMBURSE-
 17 MENTS.—Reimbursements under this section shall be al-
 18 lotted in a manner that gives special consideration for any
 19 State that—

20 “(1) shares a border with Mexico or Canada; or

21 “(2) includes within the State an area in which
 22 a large number of undocumented aliens reside rel-
 23 ative to the general population of that area.

24 “(d) DEFINITIONS.—As used in this section:

25 “(1) INDIRECT COSTS.—The term ‘indirect
 26 costs’ includes—

1 “(A) court costs, county attorney costs, de-
 2 tention costs, and criminal proceedings expendi-
 3 tures that do not involve going to trial;

4 “(B) indigent defense costs; and

5 “(C) unsupervised probation costs.

6 “(2) STATE.—The term ‘State’ has the mean-
 7 ing given such term in section 101(a)(36) of the Im-
 8 migration and Nationality Act.

9 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated \$200,000,000 for each
 11 of the fiscal years 2005 through 2011 to carry out sub-
 12 section (a)(2).”.

13 **SEC. 203. REIMBURSEMENT OF STATES FOR PRE-CONVIC-**
 14 **TION COSTS RELATING TO THE INCARCER-**
 15 **ATION OF ILLEGAL ALIENS.**

16 Section 241(i)(3)(A) of the Immigration and Nation-
 17 ality Act (8 U.S.C. 1231(i)(3)(a) is amended by inserting
 18 “charged with or” before “convicted.”

19 **TITLE III—ESSENTIAL WORKER**
 20 **VISA PROGRAM**

21 **SEC. 301. ESSENTIAL WORKERS.**

22 Section 101(a)(15)(H) of the Immigration and Na-
 23 tionality Act (8 U.S.C. 1101(a)(15)(H)) is amended—

24 (1) by striking “(H) an alien (i)(b)” and insert-
 25 ing the following:

1 “(H) an alien—

2 “(i)(b)”;

3 (2) by striking “or (ii)(a)” and inserting the
4 following:

5 “(ii)(a)”;

6 (3) by striking “or (iii)” and inserting the fol-
7 lowing:

8 “(iii)”;

9 (4) by adding at the end the following:

10 “(v)(a) subject to section 218A, hav-
11 ing residence in a foreign country, which
12 the alien has no intention of abandoning,
13 who is coming temporarily to the United
14 States to initially perform labor or services
15 (other than those occupation classifications
16 covered under the provisions of clause
17 (i)(b) or (ii)(a) or subparagraph (L), (O),
18 (P), or (R)); or.”.

19 **SEC. 302. ADMISSION OF ESSENTIAL WORKERS.**

20 (a) IN GENERAL.—Chapter 2 of title II of the Immi-
21 gration and Nationality Act (8 U.S.C. 1181 et seq.) is
22 amended by inserting after section 218 the following:

23 “ADMISSION OF TEMPORARY H-5A WORKERS

24 “SEC. 218A. (a) The Secretary of State may grant
25 a temporary visa to a nonimmigrant described in section
26 101(a)(15)(H)(v)(a) who demonstrates an intent to per-

1 form labor or services in the United States (other than
2 those occupational classifications covered under the provi-
3 sions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H)
4 or subparagraph (L), (O), (P), or (R)) of section
5 101(a)(15).

6 “(b) REQUIREMENTS FOR ADMISSION.—In order to
7 be eligible for nonimmigrant status under section
8 101(a)(15)(H)(v)(a), an alien shall meet the following re-
9 quirements:

10 “(1) ELIGIBILITY TO WORK.—The alien shall
11 establish that the alien is capable of performing the
12 labor or services required for an occupation under
13 section 101(a)(15)(H)(v).

14 “(2) EVIDENCE OF EMPLOYMENT.—The alien’s
15 evidence of employment shall be provided through
16 the Employment Eligibility Confirmation System es-
17 tablished under section 274E or in accordance with
18 requirements issued by the Secretary of State, in
19 consultation with the Secretary of Homeland Secu-
20 rity. In carrying out this paragraph, the Secretary
21 may consider evidence from employers, employer as-
22 sociations, and labor representatives.

23 “(3) FEE.—The alien shall pay a \$500 applica-
24 tion fee to apply for the visa in addition to the cost
25 of processing and adjudicating such application.

1 Nothing in this paragraph shall be construed to af-
 2 fect consular procedures for charging reciprocal fees.

3 “(4) MEDICAL EXAMINATION.—The alien shall
 4 undergo a medical examination (including a deter-
 5 mination of immunization status) at the alien’s ex-
 6 pense, that conforms to generally accepted standards
 7 of medical practice.

8 “(c) GROUNDS OF INADMISSIBILITY.—

9 “(1) IN GENERAL.—In determining an alien’s
 10 admissibility as a nonimmigrant under section
 11 101(a)(15)(H)(v)(a)—

12 “(A) paragraphs (5), (6) (except for sub-
 13 paragraph (E)), (7), (9), and (10)(B) of section
 14 212(a) may be waived for conduct that occurred
 15 before the date on which the Secure America
 16 and Orderly Immigration Act was introduced;

17 “(B) the Secretary of Homeland Security
 18 may not waive—

19 “(i) subparagraph (A), (B), (C), (E),
 20 (G), (H), or (I) of section 212(a)(2) (relat-
 21 ing to criminals);

22 “(ii) section 212(a)(3) (relating to se-
 23 curity and related grounds); or

1 “(iii) subparagraph (A) or (C) of sec-
 2 tion 212(a)(10) (relating to polygamists
 3 and child abductors);

4 “(C) for conduct that occurred before the
 5 date on which the Secure America and Orderly
 6 Immigration Act was introduced, the Secretary
 7 of Homeland Security may waive the applica-
 8 tion of any provision of section 212(a) not list-
 9 ed in subparagraph (B) on behalf of an indi-
 10 vidual alien for humanitarian purposes, to en-
 11 sure family unity, or when such waiver is other-
 12 wise in the public interest; and

13 “(D) nothing in this paragraph shall be
 14 construed as affecting the authority of the Sec-
 15 retary of Homeland Security to waive the provi-
 16 sions of section 212(a).

17 “(2) WAIVER FINE.—An alien who is granted a
 18 waiver under subparagraph (1) shall pay a \$1,500
 19 fine upon approval of the alien’s visa application.

20 “(3) APPLICABILITY OF OTHER PROVISIONS.—
 21 Sections 240B(d) and 241(a)(5) shall not apply to
 22 an alien who initially seeks admission as a non-
 23 immigrant under section 101(a)(15)(H)(v)(a).

24 “(4) RENEWAL OF AUTHORIZED ADMISSION
 25 AND SUBSEQUENT ADMISSIONS.—An alien seeking

1 renewal of authorized admission or subsequent ad-
 2 mission as a nonimmigrant under section
 3 101(a)(15)(H)(v)(a) shall establish that the alien is
 4 not inadmissible under section 212(a).

5 “(d) PERIOD OF AUTHORIZED ADMISSION.—

6 “(1) INITIAL PERIOD.—The initial period of au-
 7 thorized admission as a nonimmigrant described in
 8 section 101(a)(15)(H)(v)(a) shall be 3 years.

9 “(2) RENEWALS.—The alien may seek an ex-
 10 tension of the period described in paragraph (1) for
 11 1 additional 3-year period.

12 “(3) LOSS OF EMPLOYMENT.—

13 “(A) IN GENERAL.—Subject to subsection
 14 (c), the period of authorized admission of a
 15 nonimmigrant alien under section
 16 101(a)(15)(H)(v)(a) shall terminate if the non-
 17 immigrant is unemployed for 45 or more con-
 18 secutive days.

19 “(B) RETURN TO FOREIGN RESIDENCE.—

20 Any alien whose period of authorized admission
 21 terminates under subparagraph (A) shall be re-
 22 quired to return to the country of the alien’s
 23 nationality or last residence.

24 “(C) PERIOD OF VISA VALIDITY.—Any

25 alien, whose period of authorized admission ter-

minates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States on the basis of the same visa to work for an employer, if the alien has complied with the requirements of subsection (b)(1).

“(4) VISITS OUTSIDE UNITED STATES.—

“(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a nonimmigrant alien under section 101(a)(15)(H)(v)(a)—

“(i) may travel outside of the United States; and

“(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

“(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

“(e) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided nonimmigrant status under section

1 101(a)(15)(H)(v)(a), may accept new employment with a
 2 subsequent employer.

3 “(f) WAIVER OF RIGHTS PROHIBITED.—A non-
 4 immigrant alien described in section 101(a)(15)(H)(v)(a)
 5 may not be required to waive any rights or protections
 6 under the Secure America and Orderly Immigration Act.

7 “(g) CHANGE OF ADDRESS.—An alien having non-
 8 immigrant status described in section 101(a)(15)(H)(v)(a)
 9 shall comply by either electronic or paper notification with
 10 the change of address reporting requirements under sec-
 11 tion 265.

12 “(h) BAR TO FUTURE VISAS FOR VIOLATIONS.—

13 “(1) IN GENERAL.—Any alien having the non-
 14 immigrant status described in section
 15 101(a)(15)(H)(v)(a) shall not be eligible to renew
 16 such nonimmigrant status if the alien willfully vio-
 17 lates any material term or condition of such status.

18 “(2) WAIVER.—The alien may apply for a waiv-
 19 er of the application of subparagraph (A) for tech-
 20 nical violations, inadvertent errors, or violations for
 21 which the alien was not at fault.

22 “(i) COLLECTION OF FEES.—All fees collected under
 23 this section shall be deposited in the Treasury in accord-
 24 ance with section 286(w).”.

1 (b) CONFORMING AMENDMENT REGARDING PRE-
 2 SUMPTION OF NONIMMIGRANT STATUS.—Section 214(b)
 3 of the Immigration and Nationality Act (8 U.S.C.
 4 1184(b)) is amended by inserting “(H)(v)(a),” after
 5 “(H)(i),”.

6 (c) CLERICAL AMENDMENT.—The table of contents
 7 for the Immigration and Nationality Act (8 U.S.C. 1101
 8 et seq.) is amended by inserting after the item relating
 9 to section 218 the following:

“Sec. 218A. Admission of temporary H–5A workers.”.

10 **SEC. 303. EMPLOYER OBLIGATIONS.**

11 Employers employing a nonimmigrant described in
 12 section 101(a)(15)(H)(v)(a) of the Immigration and Na-
 13 tionality Act, as added by section 301, shall comply with
 14 all applicable Federal, State, and local laws, including—

15 (1) laws affecting migrant and seasonal agricul-
 16 tural workers; and

17 (2) the requirements under section 274E of
 18 such Act, as added by section 402.

19 **SEC. 304. PROTECTION FOR WORKERS.**

20 Section 218A of the Immigration and Nationality
 21 Act, as added by section 302, is amended by adding at
 22 the end the following:

23 “(h) APPLICATION OF LABOR AND OTHER LAWS.—

24 “(1) DEFINITIONS.—As used in this subsection
 25 and in subsections (i) through (k):

1 “(A) EMPLOY; EMPLOYEE; EMPLOYER.—
 2 The terms ‘employ’, ‘employee’, and ‘employer’
 3 have the meanings given such terms in section
 4 3 of the Fair Labor Standards Act of 1938 (29
 5 U.S.C. 203).

6 “(B) FOREIGN LABOR CONTRACTOR.—The
 7 term ‘foreign labor contractor’ means any per-
 8 son who for any compensation or other valuable
 9 consideration paid or promised to be paid, per-
 10 forms any foreign labor contracting activity.

11 “(C) FOREIGN LABOR CONTRACTING AC-
 12 TIVITY.—The term ‘foreign labor contracting
 13 activity’ means recruiting, soliciting, hiring, em-
 14 ploying, or furnishing, an individual who resides
 15 outside of the United States for employment in
 16 the United States as a nonimmigrant alien de-
 17 scribed in section 101(a)(15)(H)(v)(a).

18 “(2) COVERAGE.—Notwithstanding any other
 19 provision of law—

20 “(A) a nonimmigrant alien described in
 21 section 101(a)(15)(H)(v)(a) is prohibited from
 22 being treated as an independent contractor; and

23 “(B) no person may treat a nonimmigrant
 24 alien described in section 101(a)(15)(H)(v)(a)
 25 as an independent contractor.

1 “(3) APPLICABILITY OF LAWS.—A non-
2 immigrant alien described in section
3 101(a)(15)(H)(v)(a) shall not be denied any right or
4 any remedy under Federal, State, or local labor or
5 employment law that would be applicable to a
6 United States worker employed in a similar position
7 with the employer because of the alien’s status as a
8 nonimmigrant worker.

9 “(4) TAX RESPONSIBILITIES.—With respect to
10 each employed nonimmigrant alien described in sec-
11 tion 101(a)(15)(H)(v)(a), an employer shall comply
12 with all applicable Federal, State, and local tax and
13 revenue laws.

14 “(5) NONDISCRIMINATION IN EMPLOYMENT.—
15 An employer shall provide nonimmigrants issued a
16 visa under this section with the same wages, bene-
17 fits, and working conditions that are provided by the
18 employer to United States workers similarly em-
19 ployed in the same occupation and the same place of
20 employment.

21 “(6) NO REPLACEMENT OF STRIKING EMPLOY-
22 EES.—An employer may not hire a nonimmigrant
23 alien described in section 101(a)(15)(H)(v)(a) as a
24 replacement worker if there is a strike or lockout in

1 the course of a labor dispute in the occupational
2 classification at the place of employment.

3 “(7) WAIVER OF RIGHTS PROHIBITED.—A non-
4 immigrant alien described in section
5 101(a)(15)(H)(v)(a) may not be required to waive
6 any rights or protections under the Secure America
7 and Orderly Immigration Act. Nothing under this
8 provision shall be construed to affect the interpreta-
9 tion of other laws.

10 “(8) NO THREATENING OF EMPLOYEES.—It
11 shall be a violation of this section for an employer
12 who has filed a petition under section 203(b) to
13 threaten the alien beneficiary of such a petition with
14 withdrawal of the application, or to withdraw such
15 a petition in retaliation for the beneficiary’s exercise
16 of a right protected by the Secure America and Or-
17 derly Immigration Act.

18 “(9) WHISTLEBLOWER PROTECTION.—It shall
19 be unlawful for an employer or a labor contractor of
20 a nonimmigrant alien described in section
21 101(a)(15)(H)(v)(a) to intimidate, threaten, re-
22 strain, coerce, retaliate, discharge, or in any other
23 manner, discriminate against an employee or former
24 employee because the employee or former em-
25 ployee—

1 “(A) discloses information to the employer
2 or any other person that the employee or
3 former employee reasonably believes dem-
4 onstrates a violation of Secure America and Or-
5 derly Immigration Act.

6 “(B) cooperates or seeks to cooperate in an
7 investigation or other proceeding concerning
8 compliance with the requirements of the Secure
9 America and Orderly Immigration Act.

10 “(i) LABOR RECRUITERS.—

11 “(1) IN GENERAL.—Each employer that en-
12 gages in foreign labor contracting activity and each
13 foreign labor contractor shall ascertain and disclose
14 to each such worker who is recruited for employment
15 the following information at the time of the worker’s
16 recruitment:

17 “(A) The place of employment.

18 “(B) The compensation for the employ-
19 ment.

20 “(C) A description of employment activi-
21 ties.

22 “(D) The period of employment.

23 “(E) Any other employee benefit to be pro-
24 vided and any costs to be charged for each ben-
25 efit.

1 “(F) Any travel or transportation expenses
2 to be assessed.

3 “(G) The existence of any labor organizing
4 effort, strike, lockout, or other labor dispute at
5 the place of employment.

6 “(H) The existence of any arrangement
7 with any owner, employer, foreign contractor,
8 or its agent where such person receives a com-
9 mission from the provision of items or services
10 to workers.

11 “(I) The extent to which workers will be
12 compensated through workers’ compensation,
13 private insurance, or otherwise for injuries or
14 death, including work related injuries and
15 death, during the period of employment and, if
16 so, the name of the State workers’ compensa-
17 tion insurance carrier or the name of the policy-
18 holder of the private insurance, the name and
19 the telephone number of each person who must
20 be notified of an injury or death, and the time
21 period within which such notice must be given.

22 “(J) Any education or training to be pro-
23 vided or required, including the nature and cost
24 of such training, who will pay such costs, and
25 whether the training is a condition of employ-

1 ment, continued employment, or future employ-
2 ment.

3 “(K) A statement, in a form specified by
4 the Secretary of Labor, describing the protec-
5 tions of this Act for workers recruited abroad.

6 “(2) FALSE OR MISLEADING INFORMATION.—
7 No foreign labor contractor or employer who en-
8 gages in foreign labor contracting activity shall
9 knowingly provide material false or misleading infor-
10 mation to any worker concerning any matter re-
11 quired to be disclosed in paragraph (1).

12 “(3) LANGUAGES.—The information required to
13 be disclosed under paragraph (1) shall be provided
14 in writing in English or, as necessary and reason-
15 able, in the language of the worker being recruited.
16 The Department of Labor shall make forms avail-
17 able in English, Spanish, and other languages, as
18 necessary, which may be used in providing workers
19 with information required under this section.

20 “(4) FEES.—A person conducting a foreign
21 labor contracting activity shall not assess any fee to
22 a worker for such foreign labor contracting activity.

23 “(5) TERMS.—No employer or foreign labor
24 contractor shall, without justification, violate the

1 terms of any agreement made by that contractor or
2 employer regarding employment under this program.

3 “(6) TRAVEL COSTS.—If the foreign labor con-
4 tractor or employer charges the employee for trans-
5 portation such transportation costs shall be reason-
6 able.

7 “(7) OTHER WORKER PROTECTIONS.—

8 “(A) NOTIFICATION.—Every 2 years, each
9 employer shall notify the Secretary of Labor of
10 the identity of any foreign labor contractor en-
11 gaged by the employer in any foreign labor con-
12 tractor activity for or on behalf of the employer.

13 “(B) REGISTRATION OF FOREIGN LABOR
14 CONTRACTORS.—

15 “(i) IN GENERAL.—No person shall
16 engage in foreign labor recruiting activity
17 unless such person has a certificate of reg-
18 istration from the Secretary of Labor
19 specifying the activities that such person is
20 authorized to perform. An employer who
21 retains the services of a foreign labor con-
22 tractor shall only use those foreign labor
23 contractors who are registered under this
24 subparagraph.

1 “(ii) ISSUANCE.—The Secretary shall
2 promulgate regulations to establish an effi-
3 cient electronic process for the investiga-
4 tion and approval of an application for a
5 certificate of registration of foreign labor
6 contractors not later than 14 days after
7 such application is filed. Such process shall
8 include requirements under paragraphs
9 (1), (4), and (5) of section 1812 of title
10 29, United States Code, an expeditious
11 means to update registrations and renew
12 certificates and any other requirements the
13 Secretary may prescribe.

14 “(iii) TERM.—Unless suspended or re-
15 voked, a certificate under this subpara-
16 graph shall be valid for 2 years.

17 “(iv) REFUSAL TO ISSUE; REVOCATION;
18 SUSPENSION.—In accordance with
19 regulations promulgated by the Secretary
20 of Labor, the Secretary may refuse to issue
21 or renew, or may suspend or revoke, a cer-
22 tificate of registration under this subpara-
23 graph. The justification for such refusal,
24 suspension, or revocation may include the
25 following:

1 “(I) The application or holder of
2 the certification has knowingly made a
3 material misrepresentation in the ap-
4 plication for such certificate.

5 “(II) The applicant for or holder
6 of the certification is not the real
7 party in interest in the application or
8 certificate of registration and the real
9 party in interest is a person who has
10 been refused issuance or renewal of a
11 certificate, has had a certificate sus-
12 pended or revoked, or does not qualify
13 for a certificate under this paragraph.

14 “(III) The applicant for or holder
15 of the certification has failed to com-
16 ply with the Secure America and Or-
17 derly Immigration Act.

18 “(C) REMEDY FOR VIOLATIONS.—An em-
19 ployer engaging in foreign labor contracting ac-
20 tivity and a foreign labor contractor that vio-
21 lates the provisions of this subsection shall be
22 subject to remedies for foreign labor contractor
23 violations under subsections (j) and (k). If a
24 foreign labor contractor acting as an agent of
25 an employer violates any provision of this sub-

1 section, the employer shall also be subject to
2 remedies under subsections (j) and (k). An em-
3 ployer that violates a provision of this sub-
4 section relating to employer obligations shall be
5 subject to remedies under this subsections (j)
6 and (k).

7 “(D) EMPLOYER NOTIFICATION.—An em-
8 ployer shall notify the Secretary of Labor any
9 time the employer becomes aware of a violation
10 of this subsection by a foreign labor recruiter.

11 “(E) WRITTEN AGREEMENTS.—No foreign
12 labor contractor shall violate the terms of any
13 written agreements made with an employer re-
14 lating to any contracting activity or worker pro-
15 tection under this subsection.

16 “(F) BONDING REQUIREMENT.—The Sec-
17 retary of Labor may require a foreign labor
18 contractor under this subsection to post a bond
19 in an amount sufficient to ensure the protection
20 of individuals recruited by the foreign labor
21 contractor. The Secretary may consider the ex-
22 tent to which the foreign labor contractor has
23 sufficient ties to the United States to ade-
24 quately enforce this subsection.

25 “(j) ENFORCEMENT.—

1 “(1) IN GENERAL.—The Secretary of Labor
2 shall prescribe regulations for the receipt, investiga-
3 tion, and disposition of complaints by an aggrieved
4 person respecting a violation of this section.

5 “(2) DEFINITION.—As used in this subsection,
6 an ‘aggrieved person’ is a person adversely affected
7 by the alleged violation, including—

8 “(A) a worker whose job, wages, or work-
9 ing conditions are adversely affected by the vio-
10 lation; and

11 “(B) a representative for workers whose
12 jobs, wages, or working conditions are adversely
13 affected by the violation who brings a complaint
14 on behalf of such worker.

15 “(3) FILING DEADLINE.—No investigation or
16 hearing shall be conducted on a complaint con-
17 cerning a violation under this section unless the
18 complaint was filed not later than 12 months after
19 the date of such violation.

20 “(4) REASONABLE CAUSE.—The Secretary of
21 Labor shall conduct an investigation under this sub-
22 section if there is reasonable cause to believe that a
23 violation of this section has occurred. The process
24 established under this subsection shall provide that,
25 not later than 30 days after a complaint is filed, the

1 Secretary shall determine if there is reasonable
2 cause to find such a violation.

3 “(5) NOTICE AND HEARING.—

4 “(A) IN GENERAL.—Not later than 60
5 days after the Secretary of Labor makes a de-
6 termination of reasonable cause under para-
7 graph (4), the Secretary shall issue a notice to
8 the interested parties and offer an opportunity
9 for a hearing on the complaint, in accordance
10 with section 556 of title 5, United States Code.

11 “(B) COMPLAINT.—If the Secretary of
12 Labor, after receiving a complaint under this
13 subsection, does not offer the aggrieved party
14 or organization an opportunity for a hearing
15 under subparagraph (A), the Secretary shall no-
16 tify the aggrieved party or organization of such
17 determination and the aggrieved party or orga-
18 nization may seek a hearing on the complaint
19 in accordance with such section 556.

20 “(C) HEARING DEADLINE.—Not later than
21 60 days after the date of a hearing under this
22 paragraph, the Secretary of Labor shall make a
23 finding on the matter in accordance with para-
24 graph (6).

1 “(6) ATTORNEYS’ FEES.—A complainant who
 2 prevails with respect to a claim under this sub-
 3 section shall be entitled to an award of reasonable
 4 attorneys’ fees and costs.

5 “(7) POWER OF THE SECRETARY.—The Sec-
 6 retary may bring an action in any court of com-
 7 petent jurisdiction—

8 “(A) to seek remedial action, including in-
 9 junctive relief;

10 “(B) to recover the damages described in
 11 subsection (k); or

12 “(C) to ensure compliance with terms and
 13 conditions described in subsection (i).

14 “(8) SOLICITOR OF LABOR.—Except as pro-
 15 vided in section 518(a) of title 28, United States
 16 Code, the Solicitor of Labor may appear for and rep-
 17 resent the Secretary of Labor in any civil litigation
 18 brought under this subsection. All such litigation
 19 shall be subject to the direction and control of the
 20 Attorney General.

21 “(9) PROCEDURES IN ADDITION TO OTHER
 22 RIGHTS OF EMPLOYEES.—The rights and remedies
 23 provided to workers under this section are in addi-
 24 tion to, and not in lieu of, any other contractual or
 25 statutory rights and remedies of the workers, and

1 are not intended to alter or affect such rights and
2 remedies.

3 “(k) PENALTIES.—

4 “(1) IN GENERAL.—If, after notice and an op-
5 portunity for a hearing, the Secretary of Labor finds
6 a violation of subsection (h) or (i), the Secretary
7 may impose administrative remedies and penalties,
8 including—

9 “(A) back wages;

10 “(B) fringe benefits; and

11 “(C) civil monetary penalties.

12 “(2) CIVIL PENALTIES.—The Secretary of
13 Labor may impose, as a civil penalty—

14 “(A) for a violation of subsection (h)—

15 “(i) a fine in an amount not to exceed
16 \$2,000 per violation per affected worker;

17 “(ii) if the violation was willful viola-
18 tion, a fine in an amount not to exceed
19 \$5,000 per violation per affected worker;

20 “(iii) if the violation was willful and if
21 in the course of such violation a United
22 States worker was harmed, a fine in an
23 amount not to exceed \$25,000 per viola-
24 tion per affected worker; and

25 “(B) for a violation of subsection (i)—

1 “(i) a fine in an amount not less than
 2 \$500 and not more than \$4,000 per viola-
 3 tion per affected worker;

4 “(ii) if the violation was willful, a fine
 5 in an amount not less than \$2,000 and not
 6 more than \$5,000 per violation per af-
 7 fected worker; and

8 “(iii) if the violation was willful and if
 9 in the course of such violation a United
 10 States worker was harmed, a fine in an
 11 amount not less than \$6,000 and not more
 12 than \$35,000 per violation per affected
 13 worker.

14 “(3) USE OF CIVIL PENALTIES.—All penalties
 15 collected under this subsection shall be deposited in
 16 the Treasury in accordance with section 286(w).

17 “(4) CRIMINAL PENALTIES.—If a willful and
 18 knowing violation of subsection (i) causes extreme
 19 physical or financial harm to an individual, the per-
 20 son in violation of such subsection may be impris-
 21 oned for not more than 6 months, fined not more
 22 than \$35,000 fine, or both.”.

23 **SEC. 305. MARKET-BASED NUMERICAL LIMITATIONS.**

24 Section 214(g) of the Immigration and Nationality
 25 Act (8 U.S.C. 1184(g)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking “(beginning with fiscal year
3 1992)”;

4 (B) in subparagraph (B), by striking the
5 period at the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(C) under section 101(a)(15)(H)(v)(a),
8 may not exceed—

9 “(i) 400,000 for the first fiscal year
10 in which the program is implemented;

11 “(ii) in any subsequent fiscal year—

12 “(I) if the total number of visas
13 allocated for that fiscal year are allot-
14 ted within the first quarter of that fis-
15 cal year, then an additional 20 per-
16 cent of the allocated number shall be
17 made available immediately and the
18 allocated amount for the following fis-
19 cal year shall increase by 20 percent
20 of the original allocated amount in the
21 prior fiscal year;

22 “(II) if the total number of visas
23 allocated for that fiscal year are allot-
24 ted within the second quarter of that
25 fiscal year, then an additional 15 per-

1 cent of the allocated number shall be
2 made available immediately and the
3 allocated amount for the following fis-
4 cal year shall increase by 15 percent
5 of the original allocated amount in the
6 prior fiscal year;

7 “(III) if the total number of visas
8 allocated for that fiscal year are allot-
9 ted within the third quarter of that
10 fiscal year, then an additional 10 per-
11 cent of the allocated number shall be
12 made available immediately and the
13 allocated amount for the following fis-
14 cal year shall increase by 10 percent
15 of the original allocated amount in the
16 prior fiscal year;

17 “(IV) if the total number of visas
18 allocated for that fiscal year are allot-
19 ted within the last quarter of that fis-
20 cal year, then the allocated amount
21 for the following fiscal year shall in-
22 crease by 10 percent of the original
23 allocated amount in the prior fiscal
24 year; and

1 “(V) with the exception of the
2 first subsequent fiscal year to the fis-
3 cal year in which the program is im-
4 plemented, if fewer visas were allotted
5 the previous fiscal year than the num-
6 ber of visas allocated for that year
7 and the reason was not due to proc-
8 essing delays or delays in promul-
9 gating regulations, then the allocated
10 amount for the following fiscal year
11 shall decrease by 10 percent of the al-
12 located amount in the prior fiscal
13 year.”; and

14 (2) by adding at the end the following:

15 “(9)(A) Of the total number of visas allocated
16 for each fiscal year under paragraph (1)(C)—

17 “(i) 50,000 visas shall be allocated to
18 qualifying counties; and

19 “(ii) any of the visas allocated under
20 clause (i) that are not issued by June 30 of
21 such fiscal year, may be made available to any
22 qualified applicant.

23 “(B) In this paragraph, the term ‘qualifying
24 county’ means any county that—

1 “(i) that is outside a metropolitan statis-
2 tical area; and

3 “(ii) during the 20-year-period ending on
4 the last day of the calendar year preceding the
5 date of enactment of the Secure America and
6 Orderly Immigration Act, experienced a net
7 out-migration of inhabitants from the county of
8 at least 10 percent of the population of the
9 county at the beginning of such period.

10 “(10) In allocating visas under this subsection,
11 the Secretary of State may take any additional
12 measures necessary to deter illegal immigration.”.

13 **SEC. 306. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT**
14 **STATUS.**

15 Section 245 of the Immigration and Nationality Act
16 (8 U.S.C. 1255) is amended by adding at the end the fol-
17 lowing:

18 “(n)(1) For purposes of adjustment of status under
19 subsection (a), employment-based immigrant visas shall be
20 made available to an alien having nonimmigrant status de-
21 scribed in section 101(a)(15)(H)(v)(a) upon the filing of
22 a petition for such a visa—

23 “(A) by the alien’s employer; or

1 “(B) by the alien, if the alien has maintained
2 such nonimmigrant status in the United States for
3 a cumulative total of 4 years.

4 “(2) An alien having nonimmigrant status described
5 in section 101(a)(15)(H)(v)(a) may not apply for adjust-
6 ment of status under this section unless the alien—

7 “(A) is physically present in the United States;
8 and

9 “(B) the alien establishes that the alien—

10 “(i) meets the requirements of section 312;

11 or

12 “(ii) is satisfactorily pursuing a course of
13 study to achieve such an understanding of
14 English and knowledge and understanding of
15 the history and government of the United
16 States.

17 “(3) An alien who demonstrates that the alien meets
18 the requirements of section 312 may be considered to have
19 satisfied the requirements of that section for purposes of
20 becoming naturalized as a citizen of the United States
21 under title III.

22 “(4) Filing a petition under paragraph (1) on behalf
23 of an alien or otherwise seeking permanent residence in
24 the United States for such alien shall not constitute evi-

1 dence of the alien’s ineligibility for nonimmigrant status
 2 under section 101(a)(15)(H)(v)(a).

3 “(5) The limitation under section 302(d) regarding
 4 the period of authorized stay shall not apply to any alien
 5 having nonimmigrant status under section
 6 101(a)(15)(H)(v)(a) if—

7 “(A) a labor certification petition filed under
 8 section 203(b) on behalf of such alien is pending; or

9 “(B) an immigrant visa petition filed under sec-
 10 tion 204(b) on behalf of such alien is pending.

11 “(6) The Secretary of Homeland Security shall ex-
 12 tend the stay of an alien who qualifies for an exemption
 13 under paragraph (5) in 1-year increments until a final de-
 14 cision is made on the alien’s lawful permanent residence.

15 “(7) Nothing in this subsection shall be construed to
 16 prevent an alien having nonimmigrant status described in
 17 section 101(a)(15)(H)(v)(a) from filing an application for
 18 adjustment of status under this section in accordance with
 19 any other provision of law.”.

20 **SEC. 307. ESSENTIAL WORKER VISA PROGRAM TASK**
 21 **FORCE.**

22 (a) ESTABLISHMENT OF TASK FORCE.—

23 (1) IN GENERAL.—There is established a task
 24 force to be known as the Essential Worker Visa Pro-

1 gram Task Force (referred to in this section as the
2 “Task Force”).

3 (2) PURPOSES.—The purposes of the Task
4 Force are—

5 (A) to study the Essential Worker Visa
6 Program (referred to in this section as the
7 “Program”) established under this title; and

8 (B) to make recommendations to Congress
9 with respect to such program.

10 (3) MEMBERSHIP.—The Task Force shall be
11 composed of 10 members, of whom—

12 (A) 1 shall be appointed by the President
13 and shall serve as chairman of the Task Force;

14 (B) 1 shall be appointed by the leader of
15 the Democratic Party in the Senate, in con-
16 sultation with the leader of the Democratic
17 Party in the House of Representatives, and
18 shall serve as vice chairman of the Task Force;

19 (C) 2 shall be appointed by the majority
20 leader of the Senate;

21 (D) 2 shall be appointed by the minority
22 leader of the Senate;

23 (E) 2 shall be appointed by the Speaker of
24 the House of Representatives; and

1 (F) 2 shall be appointed by the minority
2 leader of the House of Representatives.

3 (4) QUALIFICATIONS.—

4 (A) IN GENERAL.—Members of the Task
5 Force shall be—

6 (i) individuals with expertise in eco-
7 nomics, demography, labor, business, or
8 immigration or other pertinent qualifica-
9 tions or experience; and

10 (ii) representative of a broad cross-
11 section of perspectives within the United
12 States, including the public and private
13 sectors and academia;

14 (B) POLITICAL AFFILIATION.—Not more
15 than 5 members of the Task Force may be
16 members of the same political party.

17 (C) NONGOVERNMENTAL APPOINTEES.—
18 An individual appointed to the Task Force may
19 not be an officer or employee of the Federal
20 Government or of any State or local govern-
21 ment.

22 (5) DEADLINE FOR APPOINTMENT.—All mem-
23 bers of the Task Force shall be appointed not later
24 than 6 months after the Program has been imple-
25 mented.

1 (6) VACANCIES.—Any vacancy in the Task
2 Force shall not affect its powers, but shall be filled
3 in the same manner in which the original appoint-
4 ment was made.

5 (7) MEETINGS.—

6 (A) INITIAL MEETING.—The Task Force
7 shall meet and begin the operations of the Task
8 Force as soon as practicable.

9 (B) SUBSEQUENT MEETINGS.—After its
10 initial meeting, the Task Force shall meet upon
11 the call of the chairman or a majority of its
12 members.

13 (8) QUORUM.—Six members of the Task Force
14 shall constitute a quorum.

15 (b) DUTIES.—The Task Force shall examine and
16 make recommendations regarding the Program, including
17 recommendations regarding—

18 (1) the development and implementation of the
19 Program;

20 (2) the criteria for the admission of temporary
21 workers under the Program;

22 (3) the formula for determining the yearly nu-
23 merical limitations of the Program;

24 (4) the impact of the Program on immigration;

1 (5) the impact of the Program on the United
2 States workforce and United States businesses; and

3 (6) any other matters regarding the Program
4 that the Task Force considers appropriate.

5 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
6 AGENCIES.—

7 (1) INFORMATION FROM FEDERAL AGENCIES.—

8 The Task Force may seek directly from any Federal
9 department or agency such information, including
10 suggestions, estimates, and statistics, as the Task
11 Force considers necessary to carry out the provisions
12 of this section. Upon request of the Task Force, the
13 head of such department or agency shall furnish
14 such information to the Task Force.

15 (2) ASSISTANCE FROM FEDERAL AGENCIES.—

16 The Administrator of General Services shall, on a
17 reimbursable base, provide the Task Force with ad-
18 ministrative support and other services for the per-
19 formance of the Task Force's functions. The depart-
20 ments and agencies of the United States may pro-
21 vide the Task Force with such services, funds, facili-
22 ties, staff, and other support services as they deter-
23 mine advisable and as authorized by law.

24 (d) REPORTS.—

1 (1) INITIAL REPORT.—Not later than 2 years
 2 after the Program has been implemented, the Task
 3 Force shall submit a report to Congress, the Sec-
 4 retary of State, the Secretary of Labor, and the Sec-
 5 retary of Homeland Security that contains—

6 (A) findings with respect to the duties of
 7 the Task Force;

8 (B) recommendations for improving the
 9 Program; and

10 (C) suggestions for legislative or adminis-
 11 trative action to implement the Task Force rec-
 12 ommendations.

13 (2) FINAL REPORT.—Not later than 4 years
 14 after the submission of the initial report under para-
 15 graph (1), the Task Force shall submit a final re-
 16 port to Congress, the Secretary of State, the Sec-
 17 retary of Labor, and the Secretary of Homeland Se-
 18 curity that contains additional findings, rec-
 19 ommendations, and suggestions, as described in
 20 paragraph (1).

21 **SEC. 308. WILLING WORKER-WILLING EMPLOYER ELEC-**
 22 **TRONIC JOB REGISTRY.**

23 (a) ESTABLISHMENT.—The Secretary of Labor shall
 24 direct the coordination and modification of the national
 25 system of public labor exchange services (commonly known

1 as “America’s Job Bank”) in existence on the date of en-
2 actment of this Act to provide information on essential
3 worker employment opportunities available to United
4 States workers and nonimmigrant workers under section
5 101(a)(15)(H)(v)(a) of the Immigration and Nationality
6 Act, as added by this Act.

7 (b) RECRUITMENT OF UNITED STATES WORKERS.—
8 Before the completion of evidence of employment for a po-
9 tential nonimmigrant worker under section
10 101(a)(15)(H)(v)(a) of the Immigration and Nationality
11 Act (8 U.S.C. 1101(a)(15)(H)(v)(a), an employer shall at-
12 test that the employer has posted in the Job Registry for
13 not less than 30 days in order to recruit United States
14 workers. An employer shall maintain records for not less
15 than 1 year demonstrating why United States workers
16 who applied were not hired.

17 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—
18 The Secretary of Labor shall maintain electronic job reg-
19 istry records, as established by regulation, for the purpose
20 of audit or investigation.

21 (d) ACCESS TO JOB REGISTRY.—

22 (1) CIRCULATION IN INTERSTATE EMPLOYMENT
23 SERVICE SYSTEM.—The Secretary of Labor shall en-
24 sure that job opportunities advertised on the elec-
25 tronic job registry established under this section are

1 accessible by the State workforce agencies, which
 2 may further disseminate job opportunity information
 3 to other interested parties.

4 (2) INTERNET.—The Secretary of Labor shall
 5 ensure that the Internet-based electronic job registry
 6 established or approved under this section may be
 7 accessed by workers, employers, labor organizations,
 8 and other interested parties.

9 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated to the Sec-
 11 retary of State such sums as may be necessary to carry
 12 out this title and the amendments made by this title for
 13 the period beginning on the date of enactment of this Act
 14 and ending on the last day of the sixth fiscal year begin-
 15 ning after the effective date of the regulations promul-
 16 gated by the Secretary to implement this title.

17 **TITLE IV—ENFORCEMENT**

18 **SEC. 401. DOCUMENT AND VISA REQUIREMENTS.**

19 (a) IN GENERAL.—Section 221(a) of the Immigra-
 20 tion and Nationality Act (8 U.S.C. 1201(a)) is amended
 21 by adding at the end the following:

22 “(3) VISAS AND IMMIGRATION RELATED DOCUMENT
 23 REQUIREMENTS.—

24 “(A) Visas issued by the Secretary of State and
 25 immigration related documents issued by the Sec-

1 retary of State or the Secretary of Homeland Secu-
2 rity shall comply with authentication and biometric
3 standards recognized by domestic and international
4 standards organizations.

5 “(B) Such visas and documents shall—

6 “(i) be machine-readable and tamper-re-
7 sistant;

8 “(ii) use biometric identifiers that are con-
9 sistent with the requirements of section 303 of
10 the Enhanced Border Security and Visa Entry
11 Reform Act of 2002 (8 U.S.C. 1732), and rep-
12 resent the benefits and status set forth in such
13 section;

14 “(iii) comply with the biometric and docu-
15 ment identifying standards established by the
16 International Civil Aviation Organization; and

17 “(iv) be compatible with the United States
18 Visitor and Immigrant Status Indicator Tech-
19 nology and the employment verification system
20 established under section 274E.

21 “(C) The information contained on the visas or
22 immigration related documents described in subpara-
23 graph (B) shall include—

1 “(i) the alien’s name, date and place of
 2 birth, alien registration or visa number, and, if
 3 applicable, social security number;

4 “(ii) the alien’s citizenship and immigra-
 5 tion status in the United States; and

6 “(iii) the date that such alien’s authoriza-
 7 tion to work in the United States expires, if ap-
 8 propriate.”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall take effect on the date that is 6
 11 months after the date of enactment of this Act.

12 **SEC. 402. EMPLOYMENT ELIGIBILITY CONFIRMATION SYS-**
 13 **TEM.**

14 (a) IN GENERAL.—Chapter 8 of title II of the Immi-
 15 gration and Nationality Act (8 U.S.C. 1321 et seq.) is
 16 amended by inserting after section 274D the following:

17 “EMPLOYMENT ELIGIBILITY

18 “SEC. 274E. (a) EMPLOYMENT ELIGIBILITY CON-
 19 FIRMATION SYSTEM.—

20 “(1) IN GENERAL.—The Commissioner of So-
 21 cial Security, in consultation and coordination with
 22 the Secretary of Homeland Security, shall establish
 23 an Employment Eligibility Confirmation System (re-
 24 ferred to in this section as the ‘System’) through
 25 which the Commissioner responds to inquiries made
 26 by employers who have hired individuals concerning

1 each individual's identity and employment authoriza-
2 tion.

3 “(2) MAINTENANCE OF RECORDS.—The Com-
4 missioner shall electronically maintain records by
5 which compliance under the System may be verified.

6 “(3) OBJECTIVES OF THE SYSTEM.—The Sys-
7 tem shall—

8 “(A) facilitate the eventual transition for
9 all businesses from the employer verification
10 system established in section 274A with the
11 System;

12 “(B) utilize, as a central feature of the
13 System, machine-readable documents that con-
14 tain encrypted electronic information to verify
15 employment eligibility; and

16 “(C) provide for the evidence of employ-
17 ment required under section 218A.

18 “(4) INITIAL RESPONSE.—The System shall
19 provide—

20 “(A) confirmation or a tentative noncon-
21 firmation of an individual's identity and em-
22 ployment eligibility not later than 1 working
23 day after the initial inquiry; and

24 “(B) an appropriate code indicating such
25 confirmation or tentative nonconfirmation.

1 “(5) SECONDARY VERIFICATION PROCESS IN
2 CASE OF TENTATIVE NONCONFIRMATION.—

3 “(A) ESTABLISHMENT.—For cases of ten-
4 tative nonconfirmation, the Commissioner of
5 Social Security, in consultation and coordina-
6 tion with the Secretary of Homeland Security,
7 shall establish a secondary verification process.
8 The employer shall make the secondary
9 verification inquiry not later than 10 days after
10 receiving a tentative nonconfirmation.

11 “(B) DISCREPANCIES.—If an employee
12 chooses to contest a secondary nonconfirmation,
13 the employer shall provide the employee with a
14 referral letter and instruct the employee to visit
15 an office of the Department of Homeland Secu-
16 rity or the Social Security Administration to re-
17 solve the discrepancy not later than 10 working
18 days after the receipt of such referral letter in
19 order to obtain confirmation.

20 “(C) FAILURE TO CONTEST.—An individ-
21 ual’s failure to contest a confirmation shall not
22 constitute knowledge (as defined in section
23 274a.1(l) of title 8, Code of Federal Regula-
24 tions.

1 “(6) DESIGN AND OPERATION OF SYSTEM.—

2 The System shall be designed, implemented, and op-
3 erated—

4 “(A) to maximize its reliability and ease of
5 use consistent with protecting the privacy and
6 security of the underlying information through
7 technical and physical safeguards;

8 “(B) to allow employers to verify that a
9 newly hired individual is authorized to be em-
10 ployed;

11 “(C) to permit individuals to—

12 “(i) view their own records in order to
13 ensure the accuracy of such records; and

14 “(ii) contact the appropriate agency to
15 correct any errors through an expedited
16 process established by the Commissioner of
17 Social Security, in consultation and coordi-
18 nation with the Secretary of Homeland Se-
19 curity; and

20 “(D) to prevent discrimination based on
21 national origin or citizenship status under sec-
22 tion 274B.

23 “(7) UNLAWFUL USES OF SYSTEM.—It shall be
24 an unlawful immigration-related employment prac-
25 tice—

1 “(A) for employers or other third parties
2 to use the System selectively or without author-
3 ization;

4 “(B) to use the System prior to an offer
5 of employment;

6 “(C) to use the System to exclude certain
7 individuals from consideration for employment
8 as a result of a perceived likelihood that addi-
9 tional verification will be required, beyond what
10 is required for most job applicants;

11 “(D) to use the System to deny certain
12 employment benefits, otherwise interfere with
13 the labor rights of employees, or any other un-
14 lawful employment practice; or

15 “(E) to take adverse action against any
16 person, including terminating or suspending an
17 employee who has received a tentative noncon-
18 firmation.

19 “(b) EMPLOYMENT ELIGIBILITY DATABASE.—

20 “(1) REQUIREMENT.—The Commissioner of So-
21 cial Security, in consultation and coordination with
22 the Secretary of Homeland Security and other ap-
23 propriate agencies, shall design, implement, and
24 maintain an Employment Eligibility Database (re-

ferred to in this section as the ‘Database’) as described in this subsection.

“(2) DATA.—The Database shall include, for each individual who is not a citizen or national of the United States, but is authorized or seeking authorization to be employed in the United States, the individual’s—

“(A) country of origin;

“(B) immigration status;

“(C) employment eligibility;

“(D) occupation;

“(E) metropolitan statistical area of employment;

“(F) annual compensation paid;

“(G) period of employment eligibility;

“(H) employment commencement date;

and

“(I) employment termination date.

“(3) REVERIFICATION OF EMPLOYMENT ELIGIBILITY.—The Commissioner of Social Security shall prescribe, by regulation, a system to annually reverify the employment eligibility of each individual described in this section—

“(A) by utilizing the machine-readable documents described in section 221(a)(3); or

1 “(B) if machine-readable documents are
2 not available, by telephonic or electronic com-
3 munication.

4 “(4) CONFIDENTIALITY.—

5 “(A) ACCESS TO DATABASE.—No officer or
6 employee of any agency or department of the
7 United States, other than individuals respon-
8 sible for the verification of employment eligi-
9 bility or for the evaluation of the employment
10 verification program at the Social Security Ad-
11 ministration, the Department of Homeland Se-
12 curity, and the Department of Labor, may have
13 access to any information contained in the
14 Database.

15 “(B) PROTECTION FROM UNAUTHORIZED
16 DISCLOSURE.—Information in the Database
17 shall be adequately protected against unauthor-
18 ized disclosure for other purposes, as provided
19 in regulations established by the Commissioner
20 of Social Security, in consultation with the Sec-
21 retary of Homeland Security and the Secretary
22 of Labor.

23 “(5) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated such sums

1 as may be necessary to design, implement, and
2 maintain the Database.

3 “(c) GRADUAL IMPLEMENTATION.—The Commis-
4 sioner of Social Security, in coordination with the Sec-
5 retary of Homeland Security and the Secretary of Labor
6 shall develop a plan to phase all workers into the Database
7 and phase out the employer verification system established
8 in section 274A over a period of time that the Commis-
9 sioner determines to be appropriate.

10 “(d) EMPLOYER RESPONSIBILITIES.—Each employer
11 shall—

12 “(1) notify employees and prospective employ-
13 ees of the use of the System and that the System
14 may be used for immigration enforcement purposes;

15 “(2) verify the identification and employment
16 authorization status for newly hired individuals de-
17 scribed in section 101(a)(15)(H)(v)(a) not later than
18 3 days after the date of hire;

19 “(3) use—

20 “(A) a machine-readable document de-
21 scribed in subsection (a)(3)(B); or

22 “(B) the telephonic or electronic system to
23 access the Database;

1 “(4) provide, for each employer hired, the occu-
2 pation, metropolitan statistical area of employment,
3 and annual compensation paid;

4 “(5) retain the code received indicating con-
5 firmation or nonconfirmation, for use in investiga-
6 tions described in section 212(n)(2); and

7 “(6) provide a copy of the employment
8 verification receipt to such employees.

9 “(e) GOOD-FAITH COMPLIANCE.—

10 “(1) AFFIRMATIVE DEFENSE.—A person or en-
11 tity that establishes good faith compliance with the
12 requirements of this section with respect to the em-
13 ployment of an individual in the United States has
14 established an affirmative defense that the person or
15 entity has not violated this section.

16 “(2) LIMITATION.—Paragraph (1) shall not
17 apply if a person or entity engages in an unlawful
18 immigration-related employment practice described
19 in subsection (a)(7).”.

20 (b) INTERIM DIRECTIVE.—Before the implementa-
21 tion of the Employment Eligibility Confirmation System
22 (referred to in this section as the “System”) established
23 under section 274E of the Immigration and Nationality
24 Act, as added by subsection (a), the Commissioner of So-
25 cial Security, in coordination with the Secretary of Home-

1 land Security, shall, to the maximum extent practicable,
2 implement an interim system to confirm employment eligi-
3 bility that is consistent with the provisions of such section.

4 (c) REPORTS.—

5 (1) IN GENERAL.—Not later than 3 months
6 after the last day of the second year and of the third
7 year that the System is in effect, the Comptroller
8 General of the United States shall submit to the
9 Committee on the Judiciary of the Senate and the
10 Committee on the Judiciary of the House of Rep-
11 resentatives a report on the System.

12 (2) CONTENTS.—Each report submitted under
13 paragraph (1) shall include—

14 (A) an assessment of the impact of the
15 System on the employment of unauthorized
16 workers;

17 (B) an assessment of the accuracy of the
18 Employment Eligibility Database maintained by
19 the Department of Homeland Security and So-
20 cial Security Administration databases, and
21 timeliness and accuracy of responses from the
22 Department of Homeland Security and the So-
23 cial Security Administration to employers;

24 (C) an assessment of the privacy, confiden-
25 tiality, and system security of the System;

- 1 (D) assess whether the System is being im-
 2 plemented in a nondiscriminatory manner; and
 3 (E) include recommendations on whether
 4 or not the System should be modified.

5 **SEC. 403. IMPROVED ENTRY AND EXIT DATA SYSTEM.**

6 Section 110 of the Illegal Immigration Reform and
 7 Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a)
 8 is amended—

9 (1) by striking “Attorney General” each place
 10 it appears and inserting “Secretary of Homeland Se-
 11 curity”;

12 (2) in subsection (b)—

13 (A) in paragraph (1)(C), by striking “Jus-
 14 tice” and inserting “Homeland Security”;

15 (B) in paragraph (4), by striking “and” at
 16 the end;

17 (C) in paragraph (5), by striking the pe-
 18 riod at the end and inserting “; and”; and

19 (D) by adding at the end the following:

20 “(6) collects the biometric machine-readable in-
 21 formation from an alien’s visa or immigration-re-
 22 lated document described in section 221(a)(3) of the
 23 Immigration and Nationality Act (8 U.S.C.
 24 1201(a)(3) at the time an alien arrives in the United
 25 States and at the time an alien departs from the

1 United States to determine if such alien is entering,
 2 or is present in, the United States unlawfully.”; and

3 (3) in subsection (f)(1), by striking “Depart-
 4 ments of Justice and State” and inserting “Depart-
 5 ment of Homeland Security and the Department of
 6 State”.

7 **SEC. 404. DEPARTMENT OF LABOR INVESTIGATIVE AU-**
 8 **THORITIES.**

9 Section 212(n)(2) of the Immigration and Nationality
 10 Act (8 U.S.C. 1182(n)(2)) is amended—

11 (1) by redesignating subparagraph (H) as sub-
 12 paragraph (J); and

13 (2) by inserting after subparagraph (G) the fol-
 14 lowing:

15 “(H)(i) The Secretary of Labor may initiate an
 16 investigation of any employer that employs non-
 17 immigrants described in section 101(a)(15)(H)(v)(a)
 18 if the Secretary, or the Secretary’s designee—

19 “(I) certifies that reasonable cause exists
 20 to believe that the employer is out of compli-
 21 ance with the Secure America and Orderly Im-
 22 migration Act or section 274E; and

23 “(II) approves the commencement of the
 24 investigation.

1 “(ii) In determining whether reasonable cause
2 exists to initiate an investigation under this section,
3 the Secretary shall—

4 “(I) monitor the Willing Worker-Willing
5 Employer Electronic Job Registry;

6 “(II) monitor the Employment Eligibility
7 Confirmation System, taking into consideration
8 whether—

9 “(aa) an employer’s submissions to
10 the System generate a high volume of ten-
11 tative nonconfirmation responses relative
12 to other comparable employers;

13 “(bb) an employer rarely or never
14 screens hired individuals;

15 “(cc) individuals employed by an em-
16 ployer rarely or never pursue a secondary
17 verification process as established in sec-
18 tion 274E; or

19 “(dd) any other indicators of illicit,
20 inappropriate or discriminatory use of the
21 System, especially those described in sec-
22 tion 274E(a)(6)(D), exist; and

23 “(III) consider any additional evidence
24 that the Secretary determines appropriate.

1 “(iii) Absent other evidence of noncompliance,
 2 an investigation under this subparagraph should not
 3 be initiated for lack of completeness or obvious inac-
 4 curacies by the employer in complying with section
 5 101(a)(15)(H)(v)(a).”.

6 **SEC. 405. PROTECTION OF EMPLOYMENT RIGHTS.**

7 The Secretary and the Secretary of Homeland Secu-
 8 rity shall establish a process under which a nonimmigrant
 9 worker described in clause (ii)(b) or (v)(a) of section
 10 101(a)(15)(H) of the Immigration and Nationality Act (8
 11 U.S.C. 1101(a)(15)(H)) who files a nonfrivolous com-
 12 plaint regarding a violation of this section and is otherwise
 13 eligible to remain and work in the United States may be
 14 allowed to seek other appropriate employment in the
 15 United States with an employer for a period not to exceed
 16 the maximum period of stay authorized for that non-
 17 immigrant classification.

18 **SEC. 406. INCREASED FINES FOR PROHIBITED BEHAVIOR.**

19 Section 274B(g)(2)(B)(iv) of the Immigration and
 20 Nationality Act (8 U.S.C. 1324b(g)(2)(B)(iv)) is amend-
 21 ed—

22 (1) in subclause (I), by striking “not less than
 23 \$250 and not more than \$2,000” and inserting “not
 24 less than \$500 and not more than \$4,000”;

1 (2) in subclause (II), by striking “not less than
 2 \$2,000 and not more than \$5,000” and inserting
 3 “not less than \$4,000 and not more than \$10,000”;
 4 and

5 (3) in subclause (III), by striking “not less than
 6 \$3,000 and not more than \$10,000” and inserting
 7 “not less than \$6,000 and not more than \$20,000”.

8 **TITLE V—PROMOTING CIR-**
 9 **CULAR MIGRATION PAT-**
 10 **TERNS**

11 **SEC. 501. LABOR MIGRATION FACILITATION PROGRAMS.**

12 (a) **AUTHORITY FOR PROGRAM.—**

13 (1) **IN GENERAL.—**The Secretary of State is
 14 authorized to enter into an agreement to establish
 15 and administer a labor migration facilitation pro-
 16 gram jointly with the appropriate official of a for-
 17 eign government whose citizens participate in the
 18 temporary worker program authorized under section
 19 101(a)(15)(H)(v)(a) of the Immigration and Nation-
 20 ality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)).

21 (2) **PRIORITY.—**In establishing programs under
 22 subsection (a), the Secretary of State shall place a
 23 priority on establishing such programs with foreign
 24 governments that have a large number of nationals
 25 working as temporary workers in the United States

1 under such section 101(a)(15)(H)(v)(a). The Sec-
2 retary shall enter into such agreements not later
3 than 3 months after the date of enactment of this
4 Act or as soon thereafter as is practicable.

5 (3) ELEMENTS OF PROGRAM.—A program es-
6 tablished under paragraph (1) may provide for—

7 (A) the Secretary of State, in conjunction
8 with the Secretary of Homeland Security and
9 the Secretary of Labor, to confer with a foreign
10 government—

11 (i) to establish and implement a pro-
12 gram to assist temporary workers from
13 such a country to obtain nonimmigrant
14 status under such section
15 101(a)(15)(H)(v)(a);

16 (ii) to establish programs to create
17 economic incentives for aliens to return to
18 their home country;

19 (B) the foreign government to monitor the
20 participation of its nationals in such a tem-
21 porary worker program, including departure
22 from and return to a foreign country;

23 (C) the foreign government to develop and
24 promote a reintegration program available to

1 such individuals upon their return from the
2 United States;

3 (D) the foreign government to promote or
4 facilitate travel of such individuals between the
5 country of origin and the United States; and

6 (E) any other matters that the foreign gov-
7 ernment and United States find appropriate to
8 enable such individuals to maintain strong ties
9 to their country of origin.

10 **SEC. 502. BILATERAL EFFORTS WITH MEXICO TO REDUCE**
11 **MIGRATION PRESSURES AND COSTS.**

12 (a) FINDINGS.—Congress makes the following find-
13 ings:

14 (1) Migration from Mexico to the United States
15 is directly linked to the degree of economic oppor-
16 tunity and the standard of living in Mexico.

17 (2) Mexico comprises a prime source of migra-
18 tion to the United States.

19 (3) Remittances from Mexican citizens working
20 in the United States reached a record high of nearly
21 \$17,000,000,000 in 2004.

22 (4) Migration patterns may be reduced from
23 Mexico to the United States by addressing the de-
24 gree of economic opportunity available to Mexican
25 citizens.

1 (5) Many Mexican assets are held extra-legally
2 and cannot be readily used as collateral for loans.

3 (6) A majority of Mexican businesses are small
4 or medium size with limited access to financial cap-
5 ital.

6 (7) These factors constitute a major impedi-
7 ment to broad-based economic growth in Mexico.

8 (8) Approximately 20 percent of Mexico's popu-
9 lation works in agriculture, with the majority of this
10 population working on small farms and few on large
11 commercial enterprises.

12 (9) The Partnership for Prosperity is a bilateral
13 initiative launched jointly by the President of the
14 United States and the President of Mexico in 2001,
15 which aims to boost the social and economic stand-
16 ards of Mexican citizens, particularly in regions
17 where economic growth has lagged and emigration
18 has increased.

19 (10) The Presidents of Mexico and the United
20 States and the Prime Minister of Canada, at their
21 trilateral summit on March 23, 2005, agreed to pro-
22 mote economic growth, competitiveness, and quality
23 of life in the agreement on Security and Prosperity
24 Partnership of North America.

1 (b) SENSE OF CONGRESS REGARDING PARTNERSHIP
2 FOR PROSPERITY.—It is the sense of Congress that the
3 United States and Mexico should accelerate the implemen-
4 tation of the Partnership for Prosperity to help generate
5 economic growth and improve the standard of living in
6 Mexico, which will lead to reduced migration, by—

7 (1) increasing access for poor and under served
8 populations in Mexico to the financial services sec-
9 tor, including credit unions;

10 (2) assisting Mexican efforts to formalize its
11 extra-legal sector, including the issuance of formal
12 land titles, to enable Mexican citizens to use their
13 assets to procure capital;

14 (3) facilitating Mexican efforts to establish an
15 effective rural lending system for small- and me-
16 dium-sized farmers that will—

17 (A) provide long term credit to borrowers;

18 (B) develop a viable network of regional
19 and local intermediary lending institutions; and

20 (C) extend financing for alternative rural
21 economic activities beyond direct agricultural
22 production;

23 (4) expanding efforts to reduce the transaction
24 costs of remittance flows in order to increase the

1 pool of savings available to help finance domestic in-
2 vestment in Mexico;

3 (5) encouraging Mexican corporations to adopt
4 internationally recognized corporate governance
5 practices, including anti-corruption and transparency
6 principles;

7 (6) enhancing Mexican efforts to strengthen
8 governance at all levels, including efforts to improve
9 transparency and accountability, and to eliminate
10 corruption, which is the single biggest obstacle to de-
11 velopment;

12 (7) assisting the Government of Mexico in im-
13 plementing all provisions of the Inter-American Con-
14 vention Against Corruption (ratified by Mexico on
15 May 27, 1997) and urging the Government of Mex-
16 ico to participate fully in the Convention's formal
17 implementation monitoring mechanism;

18 (8) helping the Government of Mexico to
19 strengthen education and training opportunities
20 throughout the country, with a particular emphasis
21 on improving rural education; and

22 (9) encouraging the Government of Mexico to
23 create incentives for persons who have migrated to
24 the United States to return to Mexico.

1 (c) SENSE OF CONGRESS REGARDING BILATERAL
2 PARTNERSHIP ON HEALTH CARE.—It is the sense of Con-
3 gress that the Government of the United States and the
4 Government of Mexico should enter into a partnership to
5 examine uncompensated and burdensome health care costs
6 incurred by the United States due to legal and illegal im-
7 migration, including—

8 (1) increasing health care access for poor and
9 under served populations in Mexico;

10 (2) assisting Mexico in increasing its emergency
11 and trauma health care facilities along the border,
12 with emphasis on expanding prenatal care in the
13 United States–Mexico border region;

14 (3) facilitating the return of stable, incapac-
15 tated workers temporarily employed in the United
16 States to Mexico in order to receive extended, long-
17 term care in their home country; and

18 (4) helping the Government of Mexico to estab-
19 lish a program with the private sector to cover the
20 health care needs of Mexican nationals temporarily
21 employed in the United States.

1 **TITLE VI—FAMILY UNITY AND**
 2 **BACKLOG REDUCTION**

3 **SEC. 601. ELIMINATION OF EXISTING BACKLOGS.**

4 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
 5 201(c) of the Immigration and Nationality Act (8 U.S.C.
 6 1151(c)) is amended to read as follows:

7 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
 8 IMMIGRANTS.—The worldwide level of family-sponsored
 9 immigrants under this subsection for a fiscal year is equal
 10 to the sum of—

11 “(1) 480,000;

12 “(2) the difference between the maximum num-
 13 ber of visas authorized to be issued under this sub-
 14 section during the previous fiscal year and the num-
 15 ber of visas issued during the previous fiscal year;
 16 and

17 “(3) the difference between—

18 “(A) the maximum number of visas au-
 19 thorized to be issued under this subsection dur-
 20 ing fiscal years 2001 through 2005 minus the
 21 number of visas issued under this subsection
 22 during those years; and

23 “(B) the number of visas described in sub-
 24 paragraph (A) that were issued after fiscal year
 25 2005.”.

1 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
 2 201(d) of the Immigration and Nationality Act (8 U.S.C.
 3 1151(d)) is amended to read as follows:

4 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
 5 IMMIGRANTS.—The worldwide level of employment-based
 6 immigrants under this subsection for a fiscal year is equal
 7 to the sum of—

8 “(1) 290,000;

9 “(2) the difference between the maximum num-
 10 ber of visas authorized to be issued under this sub-
 11 section during the previous fiscal year and the num-
 12 ber of visas issued during the previous fiscal year;
 13 and

14 “(3) the difference between—

15 “(A) the maximum number of visas au-
 16 thorized to be issued under this subsection dur-
 17 ing fiscal years 2001 through 2005 and the
 18 number of visa numbers issued under this sub-
 19 section during those years; and

20 “(B) the number of visas described in sub-
 21 paragraph (A) that were issued after fiscal year
 22 2005.”.

23 **SEC. 602. COUNTRY LIMITS.**

24 Section 202(a) of the Immigration and Nationality
 25 Act (8 U.S.C. 1152(a)) is amended—

1 (1) in paragraph (2)—

2 (A) by striking “, (4), and (5)” and insert-
3 ing “and (4)”; and

4 (B) by striking “7 percent (in the case of
5 a single foreign state) or 2 percent” and insert-
6 ing “10 percent (in the case of a single foreign
7 state) or 5 percent”; and

8 (2) by striking paragraph (5).

9 **SEC. 603. ALLOCATION OF IMMIGRANT VISAS.**

10 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
11 SORED IMMIGRANTS.—Section 203(a) of the Immigration
12 and Nationality Act (8 U.S.C. 1153(a)) is amended to
13 read as follows:

14 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-
15 SORED IMMIGRANTS.—Aliens subject to the worldwide
16 level specified in section 201(c) for family-sponsored immi-
17 grants shall be allocated visas as follows:

18 “(1) UNMARRIED SONS AND DAUGHTERS OF
19 CITIZENS.—Qualified immigrants who are the un-
20 married sons or daughters of citizens of the United
21 States shall be allocated visas in a quantity not to
22 exceed 10 percent of such worldwide level plus any
23 visas not required for the class specified in para-
24 graph (4).

1 “(2) SPOUSES AND UNMARRIED SONS AND
2 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
3 Visas in a quantity not to exceed 50 percent of such
4 worldwide level plus any visas not required for the
5 class specified in paragraph (1) shall be allocated to
6 qualified immigrants—

7 “(A) who are the spouses or children of an
8 alien lawfully admitted for permanent residence,
9 which visas shall constitute not less than 77
10 percent of the visas allocated under this para-
11 graph; or

12 “(B) who are the unmarried sons or
13 daughters of an alien lawfully admitted for per-
14 manent residence.

15 “(3) MARRIED SONS AND DAUGHTERS OF CITI-
16 ZENS.—Qualified immigrants who are the married
17 sons and daughters of citizens of the United States
18 shall be allocated visas in a quantity not to exceed
19 10 percent of such worldwide level plus any visas not
20 required for the classes specified in paragraphs (1)
21 and (2).

22 “(4) BROTHERS AND SISTERS OF CITIZENS.—
23 Qualified immigrants who are the brothers or sisters
24 of citizens of the United States who are at least 21
25 years of age shall be allocated visas in a quantity

1 not to exceed 30 percent of the worldwide level plus
 2 any visas not required for the classes specified in
 3 paragraphs (1) through (3).”.

4 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
 5 BASED IMMIGRANTS.—Section 203(b) of the Immigration
 6 and Nationality Act (8 U.S.C. 1153(b)) is amended—

7 (1) in paragraph (1), by striking “28.6 per-
 8 cent” and inserting “20 percent”;

9 (2) in paragraph (2)(A), by striking “28.6 per-
 10 cent” and inserting “20 percent”;

11 (3) in paragraph (3)(A)—

12 (A) by striking “28.6 percent” and insert-
 13 ing “35 percent”; and

14 (B) by striking clause (iii);

15 (4) by striking paragraph (4);

16 (5) by redesignating paragraph (5) as para-
 17 graph (4);

18 (6) in paragraph (4)(A), as redesignated, by
 19 striking “7.1 percent” and inserting “5 percent”;

20 (7) by inserting after paragraph (4), as redesign-
 21 ated, the following:

22 “(5) OTHER WORKERS.—Visas shall be made
 23 available, in a number not to exceed 30 percent of
 24 such worldwide level, plus any visa numbers not re-
 25 quired for the classes specified in paragraphs (1)

1 through (4), to qualified immigrants who are capa-
 2 ble, at the time of petitioning for classification under
 3 this paragraph, of performing unskilled labor that is
 4 not of a temporary or seasonal nature, for which
 5 qualified workers are determined to be unavailable in
 6 the United States, or to nonimmigrants under sec-
 7 tion 101(a)(15)(H)(v)(a).”; and

8 (8) by striking paragraph (6).

9 (c) CONFORMING AMENDMENTS.—

10 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-
 11 tion 101(a)(27)(M) of the Immigration and Nation-
 12 ality Act (8 U.S.C. 1101(a)(27)(M)) is amended by
 13 striking “subject to the numerical limitations of sec-
 14 tion 203(b)(4),”.

15 (2) REPEAL OF TEMPORARY REDUCTION IN
 16 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan
 17 Adjustment and Central American Relief Act (8
 18 U.S.C. 1153 note) is repealed.

19 **SEC. 604. RELIEF FOR CHILDREN AND WIDOWS.**

20 (a) IN GENERAL.—Section 201(b)(2)(A)(i) of the Im-
 21 migration and Nationality Act (8 U.S.C.
 22 1151(b)(2)(A)(i)) is amended by striking “spouses, and
 23 parents of a citizen of the United States” and inserting
 24 “(and their children who are accompanying or following
 25 to join them), the spouses (and their children who are ac-

1 accompanying or following to join them), and the parents
 2 of a citizen of the United States (and their children who
 3 are accompanying or following to join them)”.

4 (b) PETITION.—Section 204(a)(1)(A)(ii) of the Im-
 5 migration and Nationality Act (8 U.S.C. 1154
 6 (a)(1)(A)(ii) is amended by inserting “or an alien child
 7 or alien parent described in the third sentence of section
 8 201(b)(2)(A)(i)” after “section 201(b)(2)(A)(i)”.

9 (c) ADJUSTMENT OF STATUS.—Section 245 of the
 10 Immigration and Nationality Act (8 U.S.C. 1255) is
 11 amended by adding at the end the following:

12 “(n) APPLICATIONS FOR ADJUSTMENT OF STATUS
 13 BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

14 “(1) IN GENERAL.—Notwithstanding sub-
 15 sections (a) and (c) (except subsection (c)(6)), any
 16 alien described in paragraph (2) who applied for ad-
 17 justment of status prior to the death of the quali-
 18 fying relative, may have such application adjudicated
 19 as if such death had not occurred.

20 “(2) ALIEN DESCRIBED.—An alien described in
 21 this paragraph is an alien who—

22 “(A) is an immediate relative (as defined
 23 in section 201(b)(2)(A)(i));

1 “(B) is a family-sponsored immigrant (as
 2 described in subsection (a) or (d) of section
 3 203);

4 “(C) is a derivative beneficiary of an em-
 5 ployment-based immigrant under section
 6 203(b), as described in section 203(d); or

7 “(D) is a derivative beneficiary of a diver-
 8 sity immigrant (as described in section
 9 203(c)).”.

10 (d) TRANSITION PERIOD.—Notwithstanding a denial
 11 of an application for adjustment of status not more than
 12 2 years before the date of enactment of this Act, in the
 13 case of an alien whose qualifying relative died before the
 14 date of enactment of this Act, such application may be
 15 renewed by the alien through a motion to reopen, without
 16 fee, filed not later than 1 year after the date of enactment
 17 of this Act.

18 **SEC. 605. AMENDING THE AFFIDAVIT OF SUPPORT RE-**
 19 **QUIREMENTS.**

20 Section 213A of the Immigration and Nationality Act
 21 (8 U.S.C. 1183a) is amended—

22 (1) in subsection (a)(1)(A), by striking “125”
 23 and inserting “100”; and

24 (2) in subsection (f), by striking “125” each
 25 place it appears and inserting “100”.

1 **SEC. 606. DISCRETIONARY AUTHORITY.**

2 Section 212(i) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(i)) is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (3); and

6 (2) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2)(A) The Secretary of Homeland Security
9 may waive the application of subsection (a)(6)(C)—

10 “(i) in the case of an immigrant who is the
11 spouse, parent, son, or daughter of a United
12 States citizen or of an alien lawfully admitted
13 for permanent residence, if the Secretary of
14 Homeland Security determines that the refusal
15 of admission to the United States of such immi-
16 grant alien would result in extreme hardship to
17 the citizen or lawfully resident spouse, child,
18 son, daughter, or parent of such an alien; or

19 “(ii) in the case of an alien granted classi-
20 fication under clause (iii) or (iv) of section
21 204(a)(1)(A) or clause (ii) or (iii) of section
22 204(a)(1)(B), the alien demonstrates extreme
23 hardship to the alien or the alien’s parent or
24 child if, such parent or child is a United States
25 citizen, a lawful permanent resident, or a quali-
26 fied alien.

1 “(B) An alien who is granted a waiver under
2 subparagraph (A) shall pay a \$2,000 fine.”.

3 **SEC. 607. FAMILY UNITY.**

4 Section 212(a)(9) of the Immigration and Nationality
5 Act (8 U.S.C. 1182(a)(9)) is amended—

6 (1) in subparagraph (B)(iii)(I), by striking
7 “18” and inserting “21”; and

8 (2) in subparagraph (C)(ii)—

9 (A) by redesignating subclauses (1) and
10 (2) as subclauses (I) and (II); and

11 (B) in subclause (II), as redesignated, by
12 redesignating items (A), (B), (C), and (D) as
13 items (aa), (bb), (cc), and (dd); and

14 (3) by adding at the end the following:

15 “(D) WAIVER.—

16 “(i) IN GENERAL.—The Secretary
17 may waive the application of subpara-
18 graphs (B) and (C) for an alien who is a
19 beneficiary of a petition filed under sec-
20 tions 201 and 203 if such petition was
21 filed on or before the date of introduction
22 of Secure America and Orderly Immigra-
23 tion Act.

1 “(ii) FINE.—An alien who is granted
 2 a waiver under clause (i) shall pay a
 3 \$2,000 fine.”.

4 **TITLE VII—H-5B**
 5 **NONIMMIGRANTS**

6 **SEC. 701. H-5B NONIMMIGRANTS.**

7 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
 8 gration and Nationality Act (8 U.S.C. 1255 et seq.) is
 9 amended by adding after section 250 the following:

10 “H-5B NONIMMIGRANTS

11 “SEC. 250A. (a) IN GENERAL.—The Secretary of
 12 Homeland Security shall adjust the status of an alien to
 13 that of a nonimmigrant under section 101(a)(15)(H)(v)(b)
 14 if the alien—

15 “(1) submits an application for such adjust-
 16 ment; and

17 “(2) meets the requirements of this section.

18 “(b) PRESENCE IN THE UNITED STATES.—The alien
 19 shall establish that the alien—

20 “(1) was present in the United States before
 21 the date on which the Secure America and Orderly
 22 Immigration Act was introduced, and has been con-
 23 tinuously in the United States since such date; and

24 “(2) was not legally present in the United
 25 States on the date on which the Secure America and

1 Orderly Immigration Act was introduced under any
2 classification set forth in section 101(a)(15).

3 “(c) SPOUSES AND CHILDREN.—Notwithstanding
4 any other provision of law, the Secretary of Homeland Se-
5 curity shall, if the person is otherwise eligible under sub-
6 section (b)—

7 “(1) adjust the status to that of a non-
8 immigrant under section 101(a)(15)(H)(v)(b) for, or
9 provide a nonimmigrant visa to, the spouse or child
10 of an alien who is provided nonimmigrant status
11 under section 101(a)(15)(H)(v)(b); or

12 “(2) adjust the status to that of a non-
13 immigrant under section 101(a)(15)(H)(v)(b) for an
14 alien who, before the date on which the Secure
15 America and Orderly Immigration Act was intro-
16 duced in Congress, was the spouse or child of an
17 alien who is provided nonimmigrant status under
18 section 101(a)(15)(H)(v)(b), or is eligible for such
19 status, if—

20 “(A) the termination of the qualifying rela-
21 tionship was connected to domestic violence;
22 and

23 “(B) the spouse or child has been battered
24 or subjected to extreme cruelty by the spouse or

1 parent alien who is provided nonimmigrant sta-
 2 tus under section 101(a)(15)(H)(v)(b).

3 “(d) OTHER CRITERIA.—

4 “(1) IN GENERAL.—An alien may be granted
 5 nonimmigrant status under section
 6 101(a)(15)(H)(v)(b), or granted status as the spouse
 7 or child of an alien eligible for such status under
 8 subsection (c), if the alien establishes that the
 9 alien—

10 “(A) is not inadmissible to the United
 11 States under section 212(a), except as provided
 12 in paragraph (2); or

13 “(B) has not ordered, incited, assisted, or
 14 otherwise participated in the persecution of any
 15 person on account of race, religion, nationality,
 16 membership in a particular social group, or po-
 17 litical opinion.

18 “(2) GROUNDS OF INADMISSIBILITY.—In deter-
 19 mining an alien’s admissibility under paragraph
 20 (1)(A)—

21 “(A) paragraphs (5), (6)(A), (6)(B),
 22 (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of
 23 section 212(a) shall not apply for conduct that
 24 occurred before the date on which the Secure

1 America and Orderly Immigration Act was in-
2 troduced;

3 “(B) the Secretary of Homeland Security
4 may not waive—

5 “(i) subparagraph (A), (B), (C), (E),
6 (G), (H), or (I) of section 212(a)(2) (relat-
7 ing to criminals);

8 “(ii) section 212(a)(3) (relating to se-
9 curity and related grounds); or

10 “(iii) subparagraph (A) or (C) of sec-
11 tion 212(a)(10) (relating to polygamists
12 and child abductors);

13 “(C) for conduct that occurred before the
14 date on which the Secure America and Orderly
15 Immigration Act was introduced, the Secretary
16 of Homeland Security may waive the applica-
17 tion of any provision of section 212(a) not list-
18 ed in subparagraph (B) on behalf of an indi-
19 vidual alien for humanitarian purposes, to en-
20 sure family unity, or when such waiver is other-
21 wise in the public interest; and

22 “(D) nothing in this paragraph shall be
23 construed as affecting the authority of the Sec-
24 retary of Homeland Security other than under

1 this paragraph to waive the provisions of sec-
2 tion 212(a).

3 “(3) APPLICABILITY OF OTHER PROVISIONS.—
4 Sections 240B(d) and 241(a)(5) shall not apply to
5 an alien who is applying for adjustment of status in
6 accordance with this title for conduct that occurred
7 before the date on which the Secure America and
8 Orderly Immigration Act was introduced.

9 “(e) EMPLOYMENT.—

10 “(1) IN GENERAL.—The Secretary of Homeland
11 Security may not adjust the status of an alien to
12 that of a nonimmigrant under section
13 101(a)(15)(H)(v)(b) unless the alien establishes that
14 the alien—

15 “(A) was employed in the United States,
16 whether full time, part time, seasonally, or self-
17 employed, before the date on which the Secure
18 America and Orderly Immigration Act was in-
19 troduced; and

20 “(B) has been employed in the United
21 States since that date.

22 “(2) EVIDENCE OF EMPLOYMENT.—

23 “(A) CONCLUSIVE DOCUMENTS.—An alien
24 may conclusively establish employment status in
25 compliance with paragraph (1) by submitting to

1 the Secretary of Homeland Security records
2 demonstrating such employment maintained
3 by—

4 “(i) the Social Security Administra-
5 tion, Internal Revenue Service, or by any
6 other Federal, State, or local government
7 agency;

8 “(ii) an employer; or

9 “(iii) a labor union, day labor center,
10 or an organization that assists workers in
11 matters related to employment.

12 “(B) OTHER DOCUMENTS.—An alien who
13 is unable to submit a document described in
14 clauses (i) through (iii) of subparagraph (A)
15 may satisfy the requirement in paragraph (1)
16 by submitting to the Secretary at least 2 other
17 types of reliable documents that provide evi-
18 dence of employment, including—

19 “(i) bank records;

20 “(ii) business records;

21 “(iii) sworn affidavits from nonrel-
22 atives who have direct knowledge of the
23 alien’s work; or

24 “(iv) remittance records.

1 “(3) INTENT OF CONGRESS.—It is the intent of
2 Congress that the requirement in this subsection be
3 interpreted and implemented in a manner that rec-
4 ognizes and takes into account the difficulties en-
5 countered by aliens in obtaining evidence of employ-
6 ment due to the undocumented status of the alien.

7 “(4) BURDEN OF PROOF.—An alien described
8 in paragraph (1) who is applying for adjustment of
9 status under this section has the burden of proving
10 by a preponderance of the evidence that the alien
11 has satisfied the requirements of this subsection. An
12 alien may meet such burden of proof by producing
13 sufficient evidence to demonstrate such employment
14 as a matter of reasonable inference.

15 “(f) SPECIAL RULES FOR MINORS AND INDIVIDUALS
16 WHO ENTERED AS MINORS.—The employment require-
17 ments under this section shall not apply to any alien under
18 21 years of age.

19 “(g) EDUCATION PERMITTED.—An alien may satisfy
20 the employment requirements under this section, in whole
21 or in part, by full-time attendance at—

22 “(1) an institution of higher education (as de-
23 fined in section 101 of the Higher Education Act of
24 1965 (20 U.S.C. 1001)); or

1 “(2) a secondary school (as defined in section
2 9101 of the Elementary and Secondary Education
3 Act of 1965 (20 U.S.C. 7801)).

4 “(h) SECURITY AND LAW ENFORCEMENT BACK-
5 GROUND CHECKS.—

6 “(1) SUBMISSION OF FINGERPRINTS.—An alien
7 may not be granted nonimmigrant status under sec-
8 tion 101(a)(15)(H)(v)(b), or granted status as the
9 spouse or child of an alien eligible for such status
10 under subsection (c), unless the alien submits finger-
11 prints in accordance with procedures established by
12 the Secretary of Homeland Security.

13 “(2) BACKGROUND CHECKS.—The Secretary of
14 Homeland Security shall utilize fingerprints and
15 other data provided by the alien to conduct a back-
16 ground check of such alien relating to criminal, na-
17 tional security, or other law enforcement actions
18 that would render the alien ineligible for adjustment
19 of status as described in this section.

20 “(3) EXPEDITIOUS PROCESSING.—The back-
21 ground checks required under paragraph (2) shall be
22 conducted as expeditiously as possible.

23 “(i) PERIOD OF AUTHORIZED STAY AND APPLICA-
24 TION FEE AND FINE.—

25 “(1) PERIOD OF AUTHORIZED STAY.—

1 “(A) IN GENERAL.—The period of author-
2 ized stay for a nonimmigrant described in sec-
3 tion 101(a)(15)(H)(v)(b) shall be 6 years.

4 “(B) LIMITATION.—The Secretary of
5 Homeland Security may not authorize a change
6 from such nonimmigrant classification to any
7 other immigrant or nonimmigrant classification
8 until the termination of the 6-year period de-
9 scribed in subparagraph (A). The Secretary
10 may only extend such period to accommodate
11 the processing of an application for adjustment
12 of status under section 245B.

13 “(2) APPLICATION FEE.—The Secretary of
14 Homeland Security shall impose a fee for filing an
15 application for adjustment of status under this sec-
16 tion. Such fee shall be sufficient to cover the admin-
17 istrative and other expenses incurred in connection
18 with the review of such applications.

19 “(3) FINES.—

20 “(A) IN GENERAL.—In addition to the fee
21 required under paragraph (2), the Secretary of
22 Homeland Security may accept an application
23 for adjustment of status under this section only
24 if the alien pays a \$1,000 fine.

1 “(B) EXCEPTION.—Fines paid under this
2 paragraph shall not be required from an alien
3 under the age of 21.

4 “(4) COLLECTION OF FEES AND FINES.—All
5 fees and fines collected under this section shall be
6 deposited in the Treasury in accordance with section
7 286(w).

8 “(j) TREATMENT OF APPLICANTS.—

9 “(1) IN GENERAL.—An alien who files an appli-
10 cation under this section, including the alien’s
11 spouse or child—

12 “(A) shall be granted employment author-
13 ization pending final adjudication of the alien’s
14 application for adjustment of status;

15 “(B) shall be granted permission to travel
16 abroad;

17 “(C) may not be detained, determined in-
18 admissible or deportable, or removed pending
19 final adjudication of the alien’s application for
20 adjustment of status, unless the alien, through
21 conduct or criminal conviction, becomes ineli-
22 gible for such adjustment of status; and

23 “(D) may not be considered an unauthor-
24 ized alien (as defined in section 274A(h)(3))

1 until employment authorization under subpara-
2 graph (A) is denied.

3 “(2) BEFORE APPLICATION PERIOD.—If an
4 alien is apprehended after the date of enactment of
5 this section, but before the promulgation of regula-
6 tions pursuant to this section, and the alien can es-
7 tablish prima facie eligibility as a nonimmigrant
8 under section 101(a)(15)(H)(v)(b), the Secretary of
9 Homeland Security shall provide the alien with a
10 reasonable opportunity, after promulgation of regu-
11 lations, to file an application for adjustment.

12 “(3) DURING CERTAIN PROCEEDINGS.—Not-
13 withstanding any provision of this Act, an alien who
14 is in removal proceedings shall have an opportunity
15 to apply for adjustment of status under this title un-
16 less a final administrative determination has been
17 made.

18 “(4) RELATIONSHIPS OF APPLICATION TO CER-
19 TAIN ORDERS.—An alien who is present in the
20 United States and has been ordered excluded, de-
21 ported, removed, or ordered to depart voluntarily
22 from the United States under any provision of this
23 Act may, notwithstanding such order, apply for ad-
24 justment of status in accordance with this section.
25 Such an alien shall not be required to file a separate

1 motion to reopen, reconsider, or vacate the exclu-
2 sion, deportation, removal, or voluntary departure
3 order. If the Secretary of Homeland Security grants
4 the application, the Secretary shall cancel such
5 order. If the Secretary of Homeland Security ren-
6 ders a final administrative decision to deny the ap-
7 plication, such order shall be effective and enforce-
8 able to the same extent as if the application had not
9 been made.

10 “(k) ADMINISTRATIVE AND JUDICIAL REVIEW.—

11 “(1) ADMINISTRATIVE REVIEW.—

12 “(A) SINGLE LEVEL OF ADMINISTRATIVE
13 APPELLATE REVIEW.—The Secretary of Home-
14 land Security shall establish an appellate au-
15 thority within the United States Citizenship
16 and Immigration Services to provide for a sin-
17 gle level of administrative appellate review of a
18 determination respecting an application for ad-
19 justment of status under this section.

20 “(B) STANDARD FOR REVIEW.—Adminis-
21 trative appellate review referred to in subpara-
22 graph (A) shall be based solely upon the admin-
23 istrative record established at the time of the
24 determination on the application and upon the

1 presentation of additional or newly discovered
2 evidence during the time of the pending appeal.

3 “(2) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—There shall be judicial
5 review in the Federal courts of appeal of the de-
6 nial of an application for adjustment of status
7 under this section. Notwithstanding any other
8 provision of law, the standard for review of
9 such a denial shall be governed by subpara-
10 graph (B).

11 “(B) STANDARD FOR JUDICIAL REVIEW.—
12 Judicial review of a denial of an application
13 under this section shall be based solely upon the
14 administrative record established at the time of
15 the review. The findings of fact and other de-
16 terminations contained in the record shall be
17 conclusive unless the applicant can establish
18 abuse of discretion or that the findings are di-
19 rectly contrary to clear and convincing facts
20 contained in the record, considered as a whole.

21 “(C) JURISDICTION OF COURTS.—

22 “(i) IN GENERAL.—Notwithstanding
23 any other provision of law, the district
24 courts of the United States shall have ju-
25 risdiction over any cause or claim arising

1 from a pattern or practice of the Secretary
2 of Homeland Security in the operation or
3 implementation of this section that is arbitrary,
4 capricious, or otherwise contrary to
5 law, and may order any appropriate relief.

6 “(ii) REMEDIES.—A district court
7 may order any appropriate relief under
8 clause (i) if the court determines that resolution
9 of such cause or claim will serve judicial
10 and administrative efficiency or that
11 a remedy would otherwise not be reasonably
12 available or practicable.

13 “(3) STAY OF REMOVAL.—Aliens seeking administrative
14 or judicial review under this subsection
15 shall not be removed from the United States until a
16 final decision is rendered establishing ineligibility
17 under this section.

18 “(l) CONFIDENTIALITY OF INFORMATION.—

19 “(1) IN GENERAL.—Except as otherwise provided
20 in this subsection, no Federal agency or bureau,
21 nor any officer, employee, or agent of such
22 agency or bureau, may—

23 “(A) use the information furnished by the
24 applicant pursuant to an application filed under

1 this section for any purpose other than to make
2 a determination on the application;

3 “(B) make any publication through which
4 the information furnished by any particular ap-
5 plicant can be identified; or

6 “(C) permit anyone other than the sworn
7 officers and employees of such agency or bureau
8 to examine individual applications.

9 “(2) REQUIRED DISCLOSURES.—The Secretary
10 of Homeland Security shall provide the information
11 furnished pursuant to an application filed under this
12 section, and any other information derived from
13 such furnished information, to a duly recognized law
14 enforcement entity in connection with a criminal in-
15 vestigation or prosecution or a national security in-
16 vestigation or prosecution, in each instance about an
17 individual suspect or group of suspects, when such
18 information is requested in writing by such entity.

19 “(3) CRIMINAL PENALTY.—Any person who
20 knowingly uses, publishes, or permits information to
21 be examined in violation of this subsection shall be
22 fined not more than \$10,000.

23 “(m) PENALTIES FOR FALSE STATEMENTS IN AP-
24 PLICATIONS.—

25 “(1) CRIMINAL PENALTY.—

1 “(A) VIOLATION.—It shall be unlawful for
2 any person—

3 “(i) to file or assist in filing an appli-
4 cation for adjustment of status under this
5 section and knowingly and willfully falsify,
6 misrepresent, conceal, or cover up a mate-
7 rial fact or make any false, fictitious, or
8 fraudulent statements or representations,
9 or make or use any false writing or docu-
10 ment knowing the same to contain any
11 false, fictitious, or fraudulent statement or
12 entry; or

13 “(ii) to create or supply a false writ-
14 ing or document for use in making such an
15 application.

16 “(B) PENALTY.—Any person who violates
17 subparagraph (A) shall be fined in accordance
18 with title 18, United States Code, imprisoned
19 not more than 5 years, or both.

20 “(2) INADMISSIBILITY.—An alien who is con-
21 victed of a crime under paragraph (1) shall be con-
22 sidered to be inadmissible to the United States on
23 the ground described in section 212(a)(6)(C)(i).

24 “(3) EXCEPTION.—Notwithstanding paragraphs
25 (1) and (2), any alien or other entity (including an

1 employer or union) that submits an employment
 2 record that contains incorrect data that the alien
 3 used in order to obtain such employment before the
 4 date on which the Secure America and Orderly Im-
 5 migration Act is introduced, shall not, on that
 6 ground, be determined to have violated this sec-
 7 tion.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
 9 for the Immigration and Nationality Act (8 U.S.C. 1101
 10 et seq.) is amended by inserting after the item relating
 11 to section 250 the following:

“Sec. 250A. H-5B nonimmigrants.”.

12 **SEC. 702. ADJUSTMENT OF STATUS FOR H-5B NON-**
 13 **IMMIGRANTS.**

14 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
 15 gration and Nationality Act (8 U.S.C. 1255 et seq.) is
 16 amended by inserting after section 245A the following:

17 “ADJUSTMENT OF STATUS OF FORMER H-5B NON-
 18 IMMIGRANT TO THAT OF PERSON ADMITTED FOR
 19 LAWFUL PERMANENT RESIDENCE

20 “SEC. 245B. (a) REQUIREMENTS.—The Secretary
 21 shall adjust the status of an alien from nonimmigrant sta-
 22 tus under section 101(a)(15)(H)(v)(b) to that of an alien
 23 lawfully admitted for permanent residence under this sec-
 24 tion if the alien satisfies the following requirements:

1 “(1) COMPLETION OF EMPLOYMENT OR EDU-
2 CATION REQUIREMENT.—The alien establishes that
3 the alien has been employed in the United States, ei-
4 ther full time, part time, seasonally, or self-em-
5 ployed, or has met the education requirements of
6 subsection (f) or (g) of section 250A during the pe-
7 riod required by section 250A(e).

8 “(2) RULEMAKING.—The Secretary shall estab-
9 lish regulations for the timely filing and processing
10 of applications for adjustment of status for non-
11 immigrants under section 101(a)(15)(H)(v)(b).

12 “(3) APPLICATION AND FEE.—The alien who
13 applies for adjustment of status under this section
14 shall pay the following:

15 “(A) APPLICATION FEE.—An alien who
16 files an application under section 245B of the
17 Immigration and Nationality Act, shall pay an
18 application fee, set by the Secretary.

19 “(B) ADDITIONAL FINE.—Before the adju-
20 dication of an application for adjustment of sta-
21 tus filed under this section, an alien who is at
22 least 21 years of age shall pay a fine of \$1,000.

23 “(4) ADMISSIBLE UNDER IMMIGRATION
24 LAWS.—The alien establishes that the alien is not
25 inadmissible under section 212(a), except for any

1 provision of that section that is not applicable or
2 waived under section 250A(d)(2).

3 “(5) MEDICAL EXAMINATION.—The alien shall
4 undergo, at the alien’s expense, an appropriate med-
5 ical examination (including a determination of im-
6 munization status) that conforms to generally ac-
7 cepted professional standards of medical practice.

8 “(6) PAYMENT OF INCOME TAXES.—

9 “(A) IN GENERAL.—Not later than the
10 date on which status is adjusted under this sec-
11 tion, the alien shall establish the payment of all
12 Federal income taxes owed for employment dur-
13 ing the period of employment required by sec-
14 tion 250A(e) by establishing that—

15 “(i) no such tax liability exists;

16 “(ii) all outstanding liabilities have
17 been met; or

18 “(iii) the alien has entered into an
19 agreement for payment of all outstanding
20 liabilities with the Internal Revenue Serv-
21 ice.

22 “(B) IRS COOPERATION.—The Commis-
23 sioner of Internal Revenue shall provide docu-
24 mentation to an alien upon request to establish

1 the payment of all income taxes required by
2 this paragraph.

3 “(7) BASIC CITIZENSHIP SKILLS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the alien shall establish that
6 the alien—

7 “(i) meets the requirements of section
8 312; or

9 “(ii) is satisfactorily pursuing a
10 course of study to achieve such an under-
11 standing of English and knowledge and
12 understanding of the history and govern-
13 ment of the United States.

14 “(B) RELATION TO NATURALIZATION EX-
15 AMINATION.—An alien who demonstrates that
16 the alien meets the requirements of section 312
17 may be considered to have satisfied the require-
18 ments of that section for purposes of becoming
19 naturalized as a citizen of the United States
20 under title III.

21 “(8) SECURITY AND LAW ENFORCEMENT BACK-
22 GROUND CHECKS.—The Secretary shall conduct a
23 security and law enforcement background check in
24 accordance with procedures described in section
25 250A(h).

1 “(9) MILITARY SELECTIVE SERVICE.—The alien
2 shall establish that if the alien is within the age pe-
3 riod required under the Military Selective Service
4 Act (50 U.S.C. App. 451 et seq.), that such alien
5 has registered under that Act.

6 “(b) TREATMENT OF SPOUSES AND CHILDREN.—

7 “(1) ADJUSTMENT OF STATUS.—Notwith-
8 standing any other provision of law, the Secretary of
9 Homeland Security shall—

10 “(A) adjust the status to that of a lawful
11 permanent resident under this section, or pro-
12 vide an immigrant visa to the spouse or child
13 of an alien who adjusts status to that of a per-
14 manent resident under this section; or

15 “(B) adjust the status to that of a lawful
16 permanent resident under this section for an
17 alien who was the spouse or child of an alien
18 who adjusts status or is eligible to adjust status
19 to that of a permanent resident under section
20 245B in accordance with subsection (a), if—

21 “(i) the termination of the qualifying
22 relationship was connected to domestic vio-
23 lence; and

24 “(ii) the spouse or child has been bat-
25 tered or subjected to extreme cruelty by

1 the spouse or parent who adjusts status to
 2 that of a permanent resident under this
 3 section.

4 “(2) APPLICATION OF OTHER LAW.—In acting
 5 on applications filed under this subsection with re-
 6 spect to aliens who have been battered or subjected
 7 to extreme cruelty, the Secretary of Homeland Secu-
 8 rity shall apply the provisions of section
 9 204(a)(1)(J) and the protections, prohibitions, and
 10 penalties under section 384 of the Illegal Immigra-
 11 tion Reform and Immigrant Responsibility Act of
 12 1996 (8 U.S.C. 1367).

13 “(c) JUDICIAL REVIEW; CONFIDENTIALITY; PEN-
 14 ALTIES.—Subsections (n), (o), and (p) of section 250A
 15 shall apply to this section.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
 17 for the Immigration and Nationality Act (8 U.S.C. 1101
 18 et seq.) is amended by inserting after the item relating
 19 to section 245A the following:

“Sec. 245B. Adjustment of status of former H-5B nonimmigrant to that of
 person admitted for lawful permanent residence.”.

20 **SEC. 703. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
 21 **LIMITATIONS.**

22 Section 201(b)(1) of the Immigration and Nationality
 23 Act (8 U.S.C. 1151(b)(1)) is amended—

1 (1) in subparagraph (A), by striking “subpara-
2 graph (A) or (B) of”; and

3 (2) by adding at the end the following:

4 “(F) Aliens whose status is adjusted from the
5 status described in section 101(a)(15)(H)(v)(b).”.

6 **SEC. 704. EMPLOYER PROTECTIONS.**

7 (a) IMMIGRATION STATUS OF ALIEN.—Employers of
8 aliens applying for adjustment of status under section
9 245B or 250A of the Immigration and Nationality Act,
10 as added by this title, shall not be subject to civil and
11 criminal tax liability relating directly to the employment
12 of such alien prior to such alien receiving employment au-
13 thorization under this title.

14 (b) PROVISION OF EMPLOYMENT RECORDS.—Em-
15 ployers that provide unauthorized aliens with copies of em-
16 ployment records or other evidence of employment pursu-
17 ant to an application for adjustment of status under sec-
18 tion 245B or 250A of the Immigration and Nationality
19 Act or any other application or petition pursuant to any
20 other immigration law, shall not be subject to civil and
21 criminal liability under section 274A of such Act for em-
22 ploying such unauthorized aliens.

23 (c) APPLICABILITY OF OTHER LAW.—Nothing in this
24 section may be used to shield an employer from liability
25 under section 274B of the Immigration and Nationality

1 Act (8 U.S.C. 1324b) or any other labor or employment
2 law.

3 **SEC. 705. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) IN GENERAL.—There are authorized to be appro-
5 priated to the Secretary of Homeland Security such sums
6 as may be necessary to carry out this title and the amend-
7 ments made by this title.

8 (b) AVAILABILITY OF FUNDS.—Funds appropriated
9 pursuant subsection (a) shall remain available until ex-
10 pended.

11 (c) SENSE OF CONGRESS.—It is the sense of Con-
12 gress that funds authorized to be appropriated under sub-
13 section (a) should be directly appropriated so as to facili-
14 tate the orderly and timely commencement of the proc-
15 essing of applications filed under sections 245B and 250A
16 of the Immigration and Nationality Act, as added by this
17 Act.

18 **TITLE VIII—PROTECTION**
19 **AGAINST IMMIGRATION FRAUD**

20 **SEC. 801. RIGHT TO QUALIFIED REPRESENTATION.**

21 Section 292 of the Immigration and Nationality Act
22 (8 U.S.C. 1362) is amended to read as follows:

23 “RIGHT TO QUALIFIED REPRESENTATION IN
24 IMMIGRATION MATTERS

25 “SEC. 292. (a) AUTHORIZED REPRESENTATIVES IN
26 IMMIGRATION MATTERS.—Only the following individuals

1 are authorized to represent an individual in an immigra-
2 tion matter before any Federal agency or entity:

3 “(1) An attorney.

4 “(2) A law student who is enrolled in an ac-
5 credited law school, or a graduate of an accredited
6 law school who is not admitted to the bar, if—

7 “(A) the law student or graduate is ap-
8 pearing at the request of the individual to be
9 represented;

10 “(B) in the case of a law student, the law
11 student has filed a statement that the law stu-
12 dent is participating, under the direct super-
13 vision of a faculty member, attorney, or accred-
14 ited representative, in a legal aid program or
15 clinic conducted by a law school or nonprofit or-
16 ganization, and that the law student is appear-
17 ing without direct or indirect remuneration
18 from the individual the law student represents;

19 “(C) in the case of a graduate, the grad-
20 uate has filed a statement that the graduate is
21 appearing under the supervision of an attorney
22 or accredited representative and that the grad-
23 uate is appearing without direct or indirect re-
24 muneration from the individual the graduate
25 represents; and

1 “(D) the law student’s or graduate’s ap-
2 pearance is—

3 “(i) permitted by the official before
4 whom the law student or graduate wishes
5 to appear; and

6 “(ii) accompanied by the supervising
7 faculty member, attorney, or accredited
8 representative, to the extent required by
9 such official.

10 “(3) Any reputable individual, if—

11 “(A) the individual is appearing on an in-
12 dividual case basis, at the request of the indi-
13 vidual to be represented;

14 “(B) the individual is appearing without
15 direct or indirect remuneration and the indi-
16 vidual files a written declaration to that effect,
17 except as described in subparagraph (D);

18 “(C) the individual has a pre-existing rela-
19 tionship or connection with the individual enti-
20 tled to representation, such as a relative, neigh-
21 bor, clergyman, business associate, or personal
22 friend, except that this requirement may be
23 waived, as a matter of administrative discretion,
24 in cases where adequate representation would
25 not otherwise be available; and

1 “(D) if making a personal appearance on
2 behalf of another individual, the appearance is
3 permitted by the official before whom the indi-
4 vidual wishes to appear, except that such per-
5 mission shall not be granted with respect to any
6 individual who regularly engages in immigration
7 and naturalization practice or preparation, or
8 holds himself or herself out to the public as
9 qualified to do so.

10 “(4) An individual representing a recognized or-
11 ganization (as described in subsection (f)) who has
12 been approved to serve as an accredited representa-
13 tive by the Board of Immigration Appeals under
14 subsection (f)(2).

15 “(5) An accredited official, in the United
16 States, of the government to which an alien owes al-
17 legiance, if the official appears solely in his or her
18 official capacity and with the consent of the person
19 to be represented.

20 “(6) An individual who is licensed to practice
21 law and is in good standing in a court of general ju-
22 risdiction of the country in which the individual re-
23 sides and who is engaged in such practice, if the
24 person represents persons only in matters outside
25 the United States and that the official before whom

1 such person wishes to appear allows such represen-
2 tation, as a matter of discretion.

3 “(7) An attorney, or an organization rep-
4 resented by an attorney, may appear, on a case-by-
5 case basis, as amicus curiae, if the Board of Immi-
6 gration Appeals grants such permission and the pub-
7 lic interest will be served by such appearance.

8 “(b) FORMER EMPLOYEES.—No individual pre-
9 viously employed by the Department of Justice, Depart-
10 ment of State, Department of Labor, or Department of
11 Homeland Security may be permitted to act as an author-
12 ized representative under this section, if such authoriza-
13 tion would violate any other applicable provision of Fed-
14 eral law or regulation. In addition, any application for
15 such authorization must disclose any prior employment by
16 or contract with such agencies for services of any nature.

17 “(c) ADVERTISING.—Only an attorney or an indi-
18 vidual approved under subsection (f)(2) as an accredited
19 representative may advertise or otherwise hold themselves
20 out as being able to provide representation in an immigra-
21 tion matter. This provision shall in no way be deemed to
22 diminish any Federal or State law to regulate, control, or
23 enforce laws regarding such advertisement, solicitation, or
24 offer of representation.

1 “(d) REMOVAL PROCEEDINGS.—In any proceeding
2 for the removal of an individual from the United States
3 and in any appeal proceedings from such proceeding, the
4 individual shall have the privilege, as the individual shall
5 choose, of being represented (at no expense to the Govern-
6 ment) by an individual described in subsection (a). Rep-
7 resentation by an individual other than a person described
8 in subsection (a) may cause the representative to be sub-
9 ject to civil penalties or such other penalties as may be
10 applicable.

11 “(e) BENEFITS FILINGS.—In any filing or submis-
12 sion for an immigration related benefit or a determination
13 related to the immigration status of an individual made
14 to the Department of Homeland Security, the Department
15 of Labor, or the Department of State, the individual shall
16 have the privilege, as the individual shall choose, of being
17 represented (at no expense to the Government) by an indi-
18 vidual described in subsection (a). Representation by an
19 individual other than an individual described in subsection
20 (a) is cause for the representative to be subject to civil
21 or criminal penalties, as may be applicable.

22 “(f) RECOGNIZED ORGANIZATIONS AND ACCREDITED
23 REPRESENTATIVES.—

24 “(1) RECOGNIZED ORGANIZATIONS.—

1 “(A) IN GENERAL.—The Board of Immi-
2 gration Appeals may determine that a person is
3 a recognized organization if such person—

4 “(i) is a nonprofit religious, chari-
5 table, social service, or similar organization
6 established in the United States that—

7 “(I) is recognized by the Board
8 of Immigration Appeals; and

9 “(II) is authorized to designate a
10 representative to appear in an immi-
11 gration matter before the Department
12 of Homeland Security or the Execu-
13 tive Office for Immigration Review of
14 the Department of Justice; and

15 “(ii) demonstrates to the Board that
16 such person—

17 “(I) makes only nominal charges
18 and assesses no excessive membership
19 dues for individuals given assistance;
20 and

21 “(II) has at its disposal adequate
22 knowledge, information, and experi-
23 ence.

1 “(B) BONDING.—The Board, in its discre-
2 tion, may impose a bond requirement on new
3 organizations seeking recognition.

4 “(C) REPORTING OBLIGATIONS.—Recog-
5 nized organizations shall promptly notify the
6 Board when the organization no longer meets
7 the requirements for recognition or when an ac-
8 credited representative employed by the recog-
9 nized organization ceases to be employed by the
10 recognized organization.

11 “(2) ACCREDITED REPRESENTATIVES.—The
12 Board of Immigration Appeals shall approve any
13 qualified individual designated by a recognized orga-
14 nization to serve as an accredited representative.
15 Such individual must be employed by the recognized
16 organization and must meet all requirements set
17 forth in this section and in the accompanying regu-
18 lations to be authorized to represent individuals in
19 an immigration matter. Accredited representatives,
20 through their recognized organizations, must certify
21 their continuing eligibility for accreditation every 3
22 years with the Board of Immigration Appeals. Ac-
23 credited representatives who fail to comply with
24 these requirements shall not have authority to rep-

1 resent persons in an immigration matter for the rec-
2 ognized organization.

3 “(g) PROHIBITED ACTS.—An individual, other than
4 an individual authorized to represent an individual under
5 this section, may not—

6 “(1) directly or indirectly provide or offer rep-
7 resentation regarding an immigration matter for
8 compensation or contribution;

9 “(2) advertise or solicit representation in an im-
10 migration matter;

11 “(3) retain any compensation provided for a
12 prohibited act described in paragraph (1) or (2), re-
13 gardless of whether any petition, application, or
14 other document was filed with any government agen-
15 cy or entity and regardless of whether a petition, ap-
16 plication, or other document was prepared or rep-
17 resented to have been prepared by such individual;

18 “(4) represent directly or indirectly that the in-
19 dividual is an attorney or supervised by or affiliated
20 with an attorney, when such representation is false;
21 or

22 “(5) violate any applicable civil or criminal stat-
23 ute or regulation of a State regarding the provision
24 of representation by providing or offering to provide

1 immigration or immigration-related assistance ref-
 2 erenced in this subsection.

3 “(h) CIVIL ENFORCEMENT.—

4 “(1) IN GENERAL.—Any person, or any entity
 5 acting for the interests of itself, its members, or the
 6 general public (including a Federal law enforcement
 7 official or agency or law enforcement official or
 8 agency of any State or political subdivision of a
 9 State), that has reason to believe that any person is
 10 being or has been injured by reason of a violation of
 11 subsection (g) may commence a civil action in any
 12 court of competent jurisdiction.

13 “(2) REMEDIES.—

14 “(A) DAMAGES.—In any civil action
 15 brought under this subsection, if the court finds
 16 that the defendant has violated subsection (g),
 17 it shall award actual damages, plus the greater
 18 of—

19 “(i) an amount treble the amount of
 20 actual damages; or

21 “(ii) \$1,000 per violation.

22 “(B) INJUNCTIVE RELIEF.—The court
 23 may award appropriate injunctive relief, includ-
 24 ing temporary, preliminary, or permanent in-
 25 junctive relief, and restitution. Injunctive relief

1 may include, where appropriate, an order tem-
2 porarily or permanently enjoining the defendant
3 from providing any service to any person in any
4 immigration matter. The court may make such
5 orders or judgments, including the appointment
6 of a receiver, as may be necessary to prevent
7 the commission of any act described in sub-
8 section (g).

9 “(C) ATTORNEY’S FEES.—The court shall
10 also grant a prevailing plaintiff reasonable at-
11 torney’s fees and costs, including expert witness
12 fees.

13 “(D) CIVIL PENALTIES.—The court may
14 also assess a civil penalty not exceeding
15 \$50,000 for a first violation, and not exceeding
16 \$100,000 for subsequent violations.

17 “(E) CUMULATIVE REMEDIES.—Unless
18 otherwise expressly provided, the remedies or
19 penalties provided under this paragraph are cu-
20 mulative to each other and to the remedies or
21 penalties available under all other Federal laws
22 or laws of the jurisdiction where the violation
23 occurred.

24 “(3) NONPREEMPTION.—Nothing in this sub-
25 section shall be construed to preempt any other pri-

1 vate right of action or any right of action pursuant
 2 to the laws of any jurisdiction.

3 “(4) DISCOVERY.—Information obtained
 4 through discovery in a civil action under this sub-
 5 section shall not be used in any criminal action.
 6 Upon the request of any party to a civil action under
 7 this subsection, any part of the court file that makes
 8 reference to information discovered in a civil action
 9 under this subsection may be sealed.

10 “(i) NONPREEMPTION OF MORE PROTECTIVE STATE
 11 AND LOCAL LAWS.—The provisions of this section super-
 12 sede laws, regulations, and municipal ordinances of any
 13 State only to the extent such laws, regulations, and munic-
 14 ipal ordinances impede the application of any provision of
 15 this section. Any State or political subdivision of a State
 16 may impose requirements supplementing those imposed by
 17 this section.

18 “(j) DEFINITIONS.—As used in this section—

19 “(1) the term ‘attorney’ means a person who—

20 “(A) is a member in good standing of the
 21 bar of the highest court of a State; and

22 “(B) is not under any order of any court
 23 suspending, enjoining, restraining, disbarring,
 24 or otherwise restricting such person in the prac-
 25 tice of law;

1 “(2) the term ‘compensation’ means money,
2 property, labor, promise of payment, or any other
3 consideration provided directly or indirectly to an in-
4 dividual

5 “(3) the term ‘immigration matter’ means any
6 proceeding, filing, or action affecting the immigra-
7 tion or citizenship status of any person, which arises
8 under any immigration or nationality law, Executive
9 order, Presidential proclamation, or action of any
10 Federal agency;

11 “(4) the term ‘representation’, when used with
12 respect to the representation of a person, includes—

13 “(A) the appearance, either in person or
14 through the preparation or filing of any brief or
15 other document, paper, application, or petition
16 on behalf of another person or client, before any
17 Federal agency or officer; and

18 “(B) the study of the facts of a case and
19 the applicable laws, coupled with the giving of
20 advice and auxiliary activities, including the in-
21 cidental preparation of papers; and

22 “(5) the term ‘State’ includes a State or an
23 outlying possession of the United States.”.

1 **SEC. 802. PROTECTION OF WITNESS TESTIMONY.**

2 (a) DEFINITION.—Section 101(a)(15)(U)(i) of the
3 Immigration and Nationality Act (8 U.S.C.
4 1101(a)(15)(i)) is amended—

5 (1) by inserting in subclause (I) after the
6 phrase “clause (iii)” the following: “or has suffered
7 substantial financial, physical, or mental harm as
8 the result of a prohibited act described in section
9 292;”

10 (2) by inserting in subclause (II) after the
11 phrase “clause (iii)” the following: “or section 292”;

12 (3) by inserting in subclause (III) after the
13 phrase “clause (iii)” the following: “or section 292”;
14 and

15 (4) by inserting in subclause (IV) after the
16 phrase “clause (iii)” the following: “or section 292”.

17 (b) ADMISSION OF NONIMMIGRANTS.—Section
18 214(p) of the Immigration and Nationality Act of (8
19 U.S.C. 1184(p)) is amended—

20 (1) in paragraph (1), by inserting “or section
21 274E” after “section 101(a)(15)(U)(iii)” each place
22 it appears; and

23 (2) in paragraph (2)(A), by striking “10,000”
24 and inserting “15,000”.

1 **TITLE IX—CIVICS INTEGRATION**

2 **SEC. 901. FUNDING FOR THE OFFICE OF CITIZENSHIP.**

3 (a) AUTHORIZATION.—The Secretary of Homeland
4 Security, acting through the Director of the Bureau of
5 Citizenship and Immigration Services, is authorized to es-
6 tablish the United States Citizenship Foundation (referred
7 to in this section as the “Foundation”), an organization
8 duly incorporated in the District of Columbia, exclusively
9 for charitable and educational purposes to support the
10 functions of the Office of Citizenship (as described in sec-
11 tion 451(f)(2) of the Homeland Security Act of 2002 (6
12 U.S.C. 271(f)(2)).

13 (b) GIFTS.—

14 (1) TO FOUNDATION.—The Foundation may so-
15 licit, accept, and make gifts of money and other
16 property in accordance with section 501(c)(3) of the
17 Internal Revenue Code of 1986.

18 (2) FROM FOUNDATION.—The Office of Citizen-
19 ship may accept gifts from the Foundation to sup-
20 port the functions of the Office.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary to carry out the mission of the Office of Citizen-
24 ship.

1 **SEC. 902. CIVICS INTEGRATION GRANT PROGRAM.**

2 (a) IN GENERAL.—The Secretary of Homeland Secu-
3 rity shall establish a competitive grant program to fund—

4 (1) efforts by entities certified by the Office of
5 Citizenship to provide civics and English as a second
6 language courses; or

7 (2) other activities approved by the Secretary to
8 promote civics and English as a second language.

9 (b) ACCEPTANCE OF GIFTS.—The Secretary may ac-
10 cept and use gifts from the United States Citizenship
11 Foundation for grants under this section.

12 (c) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated such sums as may be
14 necessary to carry out this section.

15 **TITLE X—PROMOTING ACCESS**
16 **TO HEALTH CARE**

17 **SEC. 1001. FEDERAL REIMBURSEMENT OF EMERGENCY**
18 **HEALTH SERVICES FURNISHED TO UNDOCU-**
19 **MENTED ALIENS.**

20 Section 1011 of the Medicare Prescription Drug, Im-
21 provement, and Modernization Act of 2003 (42 U.S.C.
22 1395dd note) is amended—

23 (1) by striking “2008” and inserting “2011”;
24 and

25 (2) in subsection (c)(5), by adding at the end
26 the following:

1 “(D) Nonimmigrants described in section
 2 101(a)(15)(H)(v) of the Immigration and Na-
 3 tionality Act (8 U.S.C. 1101(a)(15)(H)(v))”.

4 **SEC. 1002. PROHIBITION AGAINST OFFSET OF CERTAIN**
 5 **MEDICARE AND MEDICAID PAYMENTS.**

6 Payments made under section 1011 of the Medicare
 7 Prescription Drug, Improvement, and Modernization Act
 8 of 2003 (42 U.S.C. 1395dd note)—

9 (1) shall not be considered “third party cov-
 10 erage” for the purposes of section 1923 of the Social
 11 Security Act (42 U.S.C. 1396r–4); and

12 (2) shall not impact payments made under such
 13 section of the Social Security Act.

14 **SEC. 1003. PROHIBITION AGAINST DISCRIMINATION**
 15 **AGAINST ALIENS ON THE BASIS OF EMPLOY-**
 16 **MENT IN HOSPITAL-BASED VERSUS NONHOS-**
 17 **PITAL-BASED SITES.**

18 Section 214(l)(1)(C) of the Immigrant and Nation-
 19 ality Act (8 U.S.C. 1184(l)(1)(C)) is amended—

20 (1) in clause (i), by striking “and” at the end;
 21 and

22 (2) by adding at the end the following:

23 “(iii) such interested Federal agency
 24 or interested State agency, in determining
 25 which aliens will be eligible for such waiv-

ers, does not utilize selection criteria, other than as described in this subsection, that discriminate on the basis of the alien’s employment in a hospital-based versus non-hospital-based facility or organization; and”.

**SEC. 1004. BINATIONAL PUBLIC HEALTH INFRASTRUCTURE
AND HEALTH INSURANCE.**

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academies (referred to in this section as the “Institute”) to study binational public health infrastructure and health insurance efforts.

(2) INPUT.—In conducting the study under paragraph (1), the Institute shall solicit input from border health experts and health insurance companies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Health and Human Services enters into a contract under subsection (a), the Institute shall submit a report concerning the study conducted under subsection (a) to

1 the Secretary of Health and Human Services and
 2 the appropriate committees of Congress.

3 (2) CONTENTS.—The report submitted under
 4 paragraph (1) shall include the recommendations of
 5 the Institute on ways to expand or improve bina-
 6 tional public health infrastructure and health insur-
 7 ance efforts.

8 **TITLE XI—MISCELLANEOUS**

9 **SEC. 1101. SUBMISSION TO CONGRESS OF INFORMATION**

10 **REGARDING H-5A NONIMMIGRANTS.**

11 (a) ENSURING ACCURATE COUNT.—The Secretary of
 12 State and the Secretary of Homeland Security shall main-
 13 tain an accurate count of the number of aliens subject to
 14 the numerical limitations under section 214(g)(1)(C) of
 15 the Immigration and Nationality Act (8 U.S.C.
 16 1184(g)(1)(C)) who are issued visas or otherwise provided
 17 nonimmigrant status.

18 (b) PROVISION OF INFORMATION.—

19 (1) QUARTERLY NOTIFICATION.—Beginning
 20 with the first fiscal year after regulations are pro-
 21 mulgated to implement this Act, the Secretary of
 22 State and the Secretary of Homeland Security shall
 23 submit quarterly reports to the Committee on the
 24 Judiciary of the Senate and the Committee on the
 25 Judiciary of the House of Representatives containing

1 the numbers of aliens who were issued visas or oth-
2 erwise provided nonimmigrant status under section
3 101(a)(15)(H)(v)(a) of the Immigrant and Nation-
4 ality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)) during
5 the preceding 3-month period.

6 (2) ANNUAL SUBMISSION.—Beginning with the
7 first fiscal year after regulations are promulgated to
8 implement this Act, the Secretary of Homeland Se-
9 curity shall submit annual reports to the Committee
10 on the Judiciary of the Senate and the Committee
11 on the Judiciary of the House of Representatives,
12 containing information on the countries of origin
13 and occupations of, geographic area of employment
14 in the United States, and compensation paid to,
15 aliens who were issued visas or otherwise provided
16 nonimmigrant status under such section
17 101(a)(15)(H)(v)(a). The Secretary shall compile
18 such reports based on the data reported by employ-
19 ers to the Employment Eligibility Confirmation Sys-
20 tem established in section 402.

21 **SEC. 1102. H-5 NONIMMIGRANT PETITIONER ACCOUNT.**

22 Section 286 of the Immigration and Nationality Act
23 (8 U.S.C. 1356) is amended by adding at the end the fol-
24 lowing:

1 “(w)(1) There is established in the general fund of
 2 the Treasury of the United States an account, which shall
 3 be known as the ‘H–5 Nonimmigrant Petitioner Account’.

4 “(2) There shall be deposited as offsetting receipts
 5 into the H–5 Nonimmigrant Petitioners Account—

6 “(A) all fees collected under section 218A; and

7 “(B) all fines collected under section
 8 212(n)(2)(I).

9 “(3) Of the fees and fines deposited into the H–5
 10 Nonimmigrant Petitioner Account—

11 “(A) 53 percent shall remain available to the
 12 Secretary of Homeland Security for efforts related
 13 to the adjudication and implementation of the H–5
 14 visa programs described in sections 221(a) and
 15 250A and any other efforts necessary to carry out
 16 the provisions of the Secure America and Orderly
 17 Immigration Act and the amendments made by such
 18 Act, of which the Secretary shall allocate—

19 “(i) 10 percent shall remain available to
 20 the Secretary of Homeland Security for the bor-
 21 der security efforts described in title I of the
 22 Secure America and Orderly Immigration Act.

23 “(ii) not more than 1 percent to promote
 24 public awareness of the H–5 visa program, to
 25 protect migrants from fraud, and to combat the

1 unauthorized practice of law described in title
2 III of the Secure America and Orderly Immi-
3 gration Act;

4 “(iii) not more than 1 percent to the Office
5 of Citizenship to promote civics integration ac-
6 tivities described in section 901 of the Secure
7 America and Orderly Immigration Act; and

8 “(iv) 2 percent for the Civics Integration
9 Grant Program under section 902 of the Secure
10 America and Orderly Immigration Act.

11 “(B) 15 percent shall remain available to the
12 Secretary of Labor for the enforcement of labor
13 standards in those geographic and occupational
14 areas in which H-5A visa holders are likely to be
15 employed and for other enforcement efforts under
16 the Secure America and Orderly Immigration Act;

17 “(C) 15 percent shall remain available to the
18 Commissioner of Social Security for the creation and
19 maintenance of the Employment Eligibility Con-
20 firmation System described in section 402 of the Se-
21 cure America and Orderly Immigration Act;

22 “(D) 15 percent shall remain available to the
23 Secretary of State to carry out any necessary provi-
24 sions of the Secure America and Orderly Immigra-
25 tion Act; and

1 “(E) 2 percent shall remain available to the
 2 Secretary of Health and Human Services for the re-
 3 imbursement of hospitals serving individuals working
 4 under programs established in this Act.”.

5 **SEC. 1103. ANTI-DISCRIMINATION PROTECTIONS.**

6 Section 274B(a)(3)(B) of the Immigration and Na-
 7 tionality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to
 8 read as follows:

9 “(B) is an alien who is—

10 “(i) lawfully admitted for permanent
 11 residence;

12 “(ii) granted the status of an alien
 13 lawfully admitted for temporary residence
 14 under section 210(a) or 245(a)(1);

15 “(iii) admitted as a refugee under sec-
 16 tion 207;

17 “(iv) granted asylum under section
 18 208; or

19 “(v) granted the status of non-
 20 immigrant under section
 21 101(a)(15)(H)(v).”.

22 **SEC. 1104. WOMEN AND CHILDREN AT RISK OF HARM.**

23 (a) CERTAIN CHILDREN AND WOMEN AT RISK OF
 24 HARM.—Section 101(a)(27) of the Immigration and Na-
 25 tionality Act (8 U.S.C. 1101(a)(27)) is amended—

1 (1) in subparagraph (L), by inserting a semi-
2 colon at the end;

3 (2) in subparagraph (M), by striking the period
4 at the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(N) subject to subsection (j), an immi-
7 grant who is not present in the United States—

8 “(i) who is—

9 “(I) referred to a consular, immi-
10 gration, or other designated official by
11 a United States Government agency,
12 an international organization, or rec-
13 ognized nongovernmental entity des-
14 ignated by the Secretary of State for
15 purposes of such referrals; and

16 “(II) determined by such official
17 to be a minor under 18 years of age
18 (as determined under subsection
19 (j)(5))—

20 “(aa) for whom no parent or
21 legal guardian is able to provide
22 adequate care;

23 “(bb) who faces a credible
24 fear of harm related to his or her
25 age;

1 “(cc) who lacks adequate
2 protection from such harm; and

3 “(dd) for whom it has been
4 determined to be in his or her
5 best interests to be admitted to
6 the United States; or

7 “(ii) who is—

8 “(I) referred to a consular or im-
9 migration official by a United States
10 Government agency, an international
11 organization or recognized nongovern-
12 mental entity designated by the Sec-
13 retary of State for purposes of such
14 referrals; and

15 “(II) determined by such official
16 to be a female who has—

17 “(aa) a credible fear of
18 harm related to her sex; and

19 “(bb) a lack of adequate
20 protection from such harm.”.

21 (b) STATUTORY CONSTRUCTION.—Section 101 of the
22 Immigration and Nationality Act (8 U.S.C. 1101) is
23 amended by adding at the end the following:

24 “(j)(1) No natural parent or prior adoptive parent
25 of any alien provided special immigrant status under sub-

1 section (a)(27)(N)(i) shall thereafter, by virtue of such
2 parentage, be accorded any right, privilege, or status
3 under this Act.

4 “(2)(A) No alien who qualifies for a special immi-
5 grant visa under subsection (a)(27)(N)(ii) may apply for
6 derivative status or petition for any spouse who is rep-
7 resented by the alien as missing, deceased, or the source
8 of harm at the time of the alien’s application and admis-
9 sion. The Secretary of Homeland Security may waive this
10 requirement for an alien who demonstrates that the alien’s
11 representations regarding the spouse were bona fide.

12 “(B) An alien who qualifies for a special immigrant
13 visa under subsection (a)(27)(N) may apply for derivative
14 status or petition for any sibling under the age of 18 years
15 or children under the age of 18 years of any such alien,
16 if accompanying or following to join the alien. For pur-
17 poses of this subparagraph, a determination of age shall
18 be made using the age of the alien on the date the petition
19 is filed with the Department of Homeland Security.

20 “(3) An alien who qualifies for a special immigrant
21 visa under subsection (a)(27)(N) shall be treated in the
22 same manner as a refugee solely for purposes of section
23 412.

24 “(4) The provisions of paragraphs (4), (5), and
25 (7)(A) of section 212(a) shall not be applicable to any

1 alien seeking admission to the United States under sub-
2 section (a)(27)(N), and the Secretary of Homeland Secu-
3 rity may waive any other provision of such section (other
4 than paragraph (2)(C) or subparagraph (A), (B), (C), or
5 (E) of paragraph (3)) with respect to such an alien for
6 humanitarian purposes, to assure family unity, or when
7 it is otherwise in the public interest. Any such waiver by
8 the Secretary of Homeland Security shall be in writing
9 and shall be granted only on an individual basis following
10 an investigation. The Secretary of Homeland Security
11 shall provide for the annual reporting to Congress of the
12 number of waivers granted under this paragraph in the
13 previous fiscal year and a summary of the reasons for
14 granting such waivers.

15 “(5) For purposes of subsection (a)(27)(N)(i)(II), a
16 determination of age shall be made using the age of the
17 alien on the date on which the alien was referred to the
18 consular, immigration, or other designated official.

19 “(6) The Secretary of Homeland Security shall waive
20 any application fee for a special immigrant visa for an
21 alien described in section 101(a)(27)(N).”.

22 (c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—
23 Section 203(b)(4) of the Immigration Nationality Act (8
24 U.S.C. 1153(b)(4)) is amended by striking “(A) or (B)
25 thereof” and inserting “(A), (B), or (N) of such section”.

1 (d) EXPEDITED PROCESS.—Not later than 45 days
2 after the date of referral to a consular, immigration, or
3 other designated official as described in section
4 101(a)(27)(N) of the Immigration and Nationality Act, as
5 added by subsection (a), special immigrant status shall be
6 adjudicated and, if granted, the alien shall be—

7 (1) paroled to the United States pursuant to
8 section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5));
9 and

10 (2) allowed to apply for adjustment of status to
11 permanent residence under section 245 of that Act
12 (8 U.S.C. 1255) not later than 1 year after the
13 alien's arrival in the United States.

14 (e) REQUIREMENT PRIOR TO ENTRY INTO THE UN-
15 TIED STATES.—

16 (1) DATABASE SEARCH.—An alien may not be
17 admitted to the United States under this section or
18 an amendment made by this section until the Sec-
19 retary of Homeland Security has ensured that a
20 search of each database maintained by an agency or
21 department of the United States has been conducted
22 to determine whether such alien is ineligible to be
23 admitted to the United States on criminal, security,
24 or related grounds.

1 (2) COOPERATION AND SCHEDULE.—The Sec-
2 retary of Homeland Security and the head of each
3 appropriate agency or department of the United
4 States shall work cooperatively to ensure that each
5 database search required by paragraph (1) is com-
6 pleted not later than 45 days after the date on
7 which an alien files a petition seeking a special im-
8 migration visa under section 101(a)(27)(N) of the
9 Immigration and Nationality Act, as added by sub-
10 section (a).

11 (f) REQUIREMENT AFTER ENTRY INTO THE UNITED
12 STATES.—

13 (1) REQUIREMENT TO SUBMIT FINGER-
14 PRINTS.—

15 (A) IN GENERAL.—Not later than 30 days
16 after the date that an alien enters the United
17 States under this section or an amendment
18 made by this section, the alien shall be
19 fingerprinted and submit to the Secretary of
20 Homeland Security such fingerprints and any
21 other personal biometric data required by the
22 Secretary.

23 (B) OTHER REQUIREMENTS.—The Sec-
24 retary of Homeland Security may prescribe reg-
25 ulations that permit fingerprints submitted by

1 an alien under section 262 of the Immigration
2 and Nationality Act (8 U.S.C. 1302) or any
3 other provision of law to satisfy the requirement
4 to submit fingerprints under subparagraph (A).

5 (2) DATABASE SEARCH.—The Secretary of
6 Homeland Security shall ensure that a search of
7 each database that contains fingerprints that is
8 maintained by an agency or department of the
9 United States be conducted to determine whether
10 such alien is ineligible for an adjustment of status
11 under any provision of the Immigration and Nation-
12 ality Act (8 U.S.C. 1101 et seq.) on criminal, secu-
13 rity, or related grounds.

14 (3) COOPERATION AND SCHEDULE.—The Sec-
15 retary of Homeland Security and the head of each
16 appropriate agency or department of the United
17 States shall work cooperatively to ensure that each
18 database search required under paragraph (2) is
19 completed not later than 180 days after the date on
20 which the alien enters the United States.

21 (4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22 (A) ADMINISTRATIVE REVIEW.—An alien
23 who is admitted to the United States under this
24 section or an amendment made by this section
25 who is determined to be ineligible for an adjust-

1 ment of status pursuant to section 212 of the
2 Immigration and Nationality Act (8 U.S.C.
3 1182) may appeal such a determination
4 through the Administrative Appeals Office of
5 the Bureau of Citizenship and Immigration
6 Services of the Department of Homeland Security. The Secretary of Homeland Security shall
7 ensure that a determination on such appeal is
8 made not later than 60 days after the date on
9 which the appeal is filed.
10

11 (B) JUDICIAL REVIEW.—Nothing in this
12 section, or in an amendment made by this section,
13 may preclude application of section
14 242(a)(2)(B) of the Immigration and Nationality
15 Act (8 U.S.C. 1252(a)(2)(B)).

16 (g) REPORT TO CONGRESS.—Not later than 1 year
17 after the date of enactment of this Act, the Secretary of
18 Homeland Security shall report to the Committee on the
19 Judiciary of the Senate and the Committee on the Judiciary
20 of the House of Representatives on the progress of
21 the implementation of this section and the amendments
22 made by this section, including—

23 (1) data related to the implementation of this
24 section and the amendments made by this section;

1 (2) data regarding the number of placements of
 2 females and children who faces a credible fear of
 3 harm as referred to in section 101(a)(27)(N) of the
 4 Immigration and Nationality Act, as added by sub-
 5 section (a); and

6 (3) any other information that the Secretary of
 7 Homeland Security determines to be appropriate.

8 (h) AUTHORIZATION OF APPROPRIATIONS.—There
 9 are authorized to be appropriated such sums as may be
 10 necessary to carry out this section and the amendments
 11 made by this section.

12 **SEC. 1105. EXPANSION OF S VISA.**

13 (a) EXPANSION OF S VISA CLASSIFICATION.—Sec-
 14 tion 101(a)(15)(S) of the Immigration and Nationality
 15 Act (8 U.S.C. 1101(a)(15)(S)) is amended—

16 (1) in clause (i)—

17 (A) by striking “Attorney General” each
 18 place that term appears and inserting “Sec-
 19 retary of Homeland Security”; and

20 (B) by striking “or” at the end; and

21 (2) in clause (ii)—

22 (A) by striking “Attorney General” and in-
 23 serting “Secretary of Homeland Security”; and

1 (B) by striking “1956,” and all that fol-
2 lows through “the alien;” and inserting the fol-
3 lowing: “1956; or

4 “(iii) who the Secretary of Homeland Se-
5 curity and the Secretary of State, in consulta-
6 tion with the Director of Central Intelligence,
7 jointly determine—

8 “(I) is in possession of critical reliable
9 information concerning the activities of
10 governments or organizations, or their
11 agents, representatives, or officials, with
12 respect to weapons of mass destruction
13 and related delivery systems, if such gov-
14 ernments or organizations are at risk of
15 developing, selling, or transferring such
16 weapons or related delivery systems; and

17 “(II) is willing to supply or has sup-
18 plied, fully and in good faith, information
19 described in subclause (I) to appropriate
20 persons within the United States Govern-
21 ment;

22 and, if the Secretary of Homeland Security (or with re-
23 spect to clause (ii), the Secretary of State and the Sec-
24 retary of Homeland Security jointly) considers it to be ap-
25 propriate, the spouse, married and unmarried sons and

1 daughters, and parents of an alien described in clause (i),
 2 (ii), or (iii) if accompanying, or following to join, the
 3 alien;”.

4 (b) NUMERICAL LIMITATION.—Section 214(k)(1) of
 5 the Immigration and Nationality Act (8 U.S.C.
 6 1184(k)(1)) is amended to read as follows:

7 “(1) The number of aliens who may be provided
 8 a visa as nonimmigrants under section
 9 101(a)(15)(S) in any fiscal year may not exceed
 10 3,500.”.

11 **SEC. 1106. VOLUNTEERS.**

12 It is not a violation of clauses (ii), (iii), or (iv) of
 13 subparagraph (A) for a religious denomination described
 14 in section 101(a)(27)(C)(i) or an affiliated religious orga-
 15 nization described in section 101(a)(27)(C)(ii)(III), or
 16 their agents or officers, to encourage, invite, call, allow,
 17 or enable an alien, who is already present in the United
 18 States in violation of law to carry on the violation de-
 19 scribed in section 101(a)(27)(C)(ii)(I), as a volunteer who
 20 is not compensated as an employee, notwithstanding the
 21 provision of room, board, travel, and other basic living ex-
 22 penses.

○